

# **INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND**

## **NATIONAL REPORT: THE NETHERLANDS**

### **Outline**

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. Given their resources, approximately 40% of the Dutch population (16.4 million people) would, according to the latest estimates, qualify for subsidized legal aid if circumstances so require. The legal aid itself is mainly financed by the state (the Legal Aid Fund) and just for a minor part by an income-related contribution of the individual client.

A body called the *Legal Aid Board* ('Raad voor Rechtsbijstand') is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. The Legal Aid Board consists of five regional offices and one central office.<sup>1</sup> Legal advice and, if necessary, help by a professional lawyer are made available by two parties: the so-called Legal Services Counters act as what is commonly known as the 'front office', and private lawyers and mediators provide subsidized legal aid in more complicated or time-consuming matters. At present, the Legal Services Counters annually provide easily accessible, free legal services to over half a million clients. The Counters are meant as a first step to receive legal aid and, if necessary, referral to a lawyer or mediator.

Private lawyers and mediators who operate under the terms of the legal aid system need to be registered with the Legal Aid Board and comply with quality standards which are established by an agreement between the Board, the Dutch Bar Association and the Ministry of Justice.<sup>2</sup> In order to be allowed to assist a client in a particular case, a registered lawyer makes an application to the Legal Aid Board on behalf of his client. It is an application for a so-called *certificate*, i.e. a statement by the Board that the client in question is entitled to legal

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<sup>1</sup> In December 2008 the five regional Boards were merged into one national Legal Aid Board with five regional offices and one central office.

<sup>2</sup> The quality standard for mediators is also based upon an agreement with the Courts and the Dutch Mediation Institute.

aid. In 2008, the Legal Aid Register included the names of approximately 7,100 lawyers who dealt with a total of over 420,000 cases.

## **1. The Legal Aid Act and the structure of the Dutch legal aid system**

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 legal aid, which is financed by the government.<sup>3</sup> 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 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.

The Legal Aid Board also advises both the Ministry of Justice and the Parliament 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. The government contributions on legal aid are increasing each year (see Table 1).<sup>4</sup>

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<sup>3</sup> 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.'

<sup>4</sup> In 2008, the parliament has decided to cut the costs of legal aid with €50 million a year to prevent them from becoming even higher. At the end of this paper the planned cost reduction will be discussed in more detail.

**Table 1: Dutch population, eligibility for legal aid and expenditure on legal aid**

	1994	1998	2002	2006	2007
Total Dutch population	15,300,000	15,650,000	16,105,000	16,334,000	16,358,000
Total expenditure on legal aid in Euro	184,000,000	195,000,000	315,000,000	398,000,000	420,000,000
Expenditure per capita in Euro	12	12	20	24	26

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 provide front services, i.e. primary legal advice in the first line. 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. To some extent, trade unions and consumer organisations also provide legal aid. The number of legal aid insurances is rising too. In 2000, 14% of the households had a legal aid insurance policy. By 2006 this percentage had doubled to 28%.

The costs of legal aid are partly covered by a contribution from the client himself. This personal contribution, 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 case of relatively simple legal problems, private lawyers are allowed to charge a standard three-hours service fee, of which the client contributes only € 13.50 (see Table 2). At present, only a rough appraisal is made of the hours that the lawyer is about to spend on the case. Whether or not a client is entitled to three-hour legal aid, depends on his monthly income.

**Table 2: Client's income and contribution towards (max.) three-hour legal aid, from 01-01-2009**

<i>Monthly income: married/single with child(ren)</i>	<i>Client's contribution to legal aid; max. 3 hours</i>	<i>Monthly income: single</i>
0 - € 2,325	€ 13.50	0 - € 1,653

If a problem is expected to take more than three hours, clients are entitled to legal aid only, if they have been granted a so-called *legal aid certificate*. In order to obtain this, a (Board-registered) lawyer needs to make an application to the Legal Aid Board on behalf of his client. The Board assesses each application both in terms of the client's means and of the merits and significance of the problem.

Since April 2005 it is also possible to apply for a *mediation certificate*. This allows the client to call in help from an independent mediator, so as to settle an issue between himself and another party. The client's contribution towards the costs of mediation is generally less than that of regular legal aid. In 2008 the contribution for mediation is set at a maximum of € 94.

In April 2006 the system legal aid system was reformed. From then on, the eligibility for legal aid was based on the annual income and assets. The Legal Aid Board 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 resources.

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 contribution, which is based on the information concerning his income and other financial means. In 2009 the contributions to be made by clients varied from € 98 to € 732 per case (see Table 3). Individuals whose income exceeds € 33,600 (partner income included) or € 23,800 (single) are not entitled to legal aid.

**Table 3: Income and client's contribution, from 01-01-2009**

<i>Taxable annual income: married/single with child(ren)</i>	<i>Client's contribution</i>	<i>Taxable annual income: single</i>
0 - 23,400	98	0 - 16,800
23,400 - 24,200	154	16,800 - 17,300
24,200 - 25,500	265	17,300 - 18,200
25,500 - 28,300	466	18,200 - 20,000
28,300 - 33,600	732	20,000 - 23,800

Eligibility for legal aid, however, is not only subject to the level of income but to the availability of other financial resources (such as savings) too. The applicant's capital must not exceed € 20,315 (with a supplementary allowance of € 2.715 per child under 18 in his care).

**Table 4: Maximum capital for eligibility for legal aid in 2008**

<i>Maximum capital*</i>	<i>Supplementary allowance per child under 18</i>
€ 20,315	€ 2,715

\* Applicants of 65 or above are allowed a maximum capital of € 26,892

Sometimes clients are exempted from individual contributions. This applies to all cases where people have been deprived of their freedom. Exemption from any contribution also holds for clients in criminal cases whose income is in the lowest category.

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. This is the so-called *reference year*. The reason to use this year's income data, is that these data are the latest that are available from the tax authorities. Moreover, these 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. Moreover, his income (or other financial resources) needs to have decreased by at least 15% since the reference year.<sup>5</sup>

<sup>5</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.

If a client is in need of a second certificate within six months, his contribution will be reduced by 50% (this reduction applies to a maximum of four certificates within six months).

## **2. Legal Services Counters: facts and figures**

As outlined above, the Counters act as front offices that provide primary legal aid. They offer general information concerning rules and regulations as well as legal procedures. They give advice in simple legal matters and refer clients to private lawyers or mediators, if their problems turn out to be more complicated or time-consuming. All information services are free of charge and are provided on the spot or as part of a consultation hour (max. 60 minutes). Clients can turn to the Counters with 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 with by the Counters);
- what kind of help is most suitable for the client.

At this stage, clients are also informed on the chances of success, the time that is needed and the costs of a subsequent procedure. On the basis of this information, clients can weigh the case and decide whether or not to proceed with it. If the case requires in-depth help by a professional and if the client so chooses, he can consult a private lawyer, a Bar member, or a mediator who may act on his behalf. From then on, the client is held to pay an (income-related) contribution towards the costs.

The focus, by the Counters, 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 Service Counters are generally regarded as easily accessible and fairly unceremonious. 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 and minimize costs, both for the individual in question and for society at large.

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 Centres<sup>6</sup>; the secondary function (extended consultation and actual subsidized aid) was to be dealt with by private lawyers only. This operation was necessary in order to keep the focus on primary legal aid and achieve more transparency of the legal aid system as a whole.

A total of 30 Legal Services Counters has been established. They have been evenly set up geographically, so that every Dutch citizen is within easy reach of a Legal Services Counter, at an approximately one hour journey by public transport. In general, each Legal Services Counter is staffed with at least six 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 be employed too. The Dutch bachelor education system recently started a law course to train students for this purpose.

The sites 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 three desks. The back of the shop is equipped with a call centre and rooms for private consultation. There is also a shelf containing all kinds of brochures with information about legal issues.

The Counter's receptionist welcomes the clients in the open waiting area and helps them to find their way to the various sources of legal information. In the waiting area, computer terminals are available with references to documentation on a large variety of legal matters. 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 and nationwide. Sophisticated computer software, specifically designed for the Legal Services Counters, is at the staff's disposal and helps them to correctly and quickly answer any client's question. In due course, several

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<sup>6</sup> The former Legal Aid and Advice Centres used to provide both informative services and subsidized 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 subsidized legal aid on the other.

features of the software will also become available for client consultation at the computer terminals in the waiting areas. Customer surveys have shown that, in general, clients rate the services by the Counters as 'good' or even 'very good'.

Below, figures can be found concerning the nature of the client contacts at the Legal Services Counters. In 2008 the Counters attended to 644,653 contacts. The majority of services are provided by telephone (see Table 5). Because the Legal Services Counters are a fairly new facility, the figures of 2007 and 2008 do not easily compare to those of the previous years.

**Table 5: Nature of client contacts of Legal Services Counters (2007 and 2008)**

	<i>Total number 2007</i>	<i>Percentages 2007</i>	<i>Total number 2008</i>	<i>Percentages 2008</i>
Telephone	348,000	58	376,000	58
Counter	131,000	22	149,000	23
Consultation hour	97,000	16	87,000	13
E-mail + website	23,000	4	33,000	5
<i>Total</i>	<i>599,000*</i>	<i>100</i>	<i>645,000</i>	<i>100</i>

**\* Some figures have been rounded up. That is why the total does not exactly equal the sum of the separate figures.**

The Legal Services Counters provide several kinds of services. The majority (see Table 6) deals with providing information and answering questions (82%). The Counters also refer clients to the consultation hours, or to lawyers or mediators. (Up to 2007, mediation was accounted for manually. That is why they have not been included in Table 6 but in a separate table; see Table 7 below).

**Table 6: Services provided by Legal Services Counters (2007 and 2008)**

	<i>Total number 2007</i>	<i>Percentages 2007</i>	<i>Total number 2008</i>	<i>Percentages 2008</i>
Supplying information and answering questions	545,000	83	602,000	82
Internal referral to consultation hour	72,000	11	78,000	11
Referral to lawyer	39,000	6	37,000	5
Mediation*	-	-	13,000	2
<i>Total</i>	<i>656,000**</i>	<i>100</i>	<i>730,000</i>	<i>100</i>

**\* 2008 was the first year in which the referrals to mediations were registered electronically. This number does not represent the actual referrals to mediation, but the number of times mediation was seriously taken into account as an option by the client. The actual number of successfully completed referrals is represented in Table 7.**

**\*\* Which is more than 599,000, because a client can obtain more than 1 service.**

Referrals 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 to whom clients can be referred. The following criteria are used to make a selection. First the availability of a lawyer on a certain time and date, second whether a lawyer is specialized in the case involved, third the matching of the client's and lawyers' zip codes and last the number of referrals a lawyer already has obtained within a certain period of time. The software find a lawyer in the client's neighbourhood and with the appropriate specialisation.

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 Legal Services Counter. The client, on the other hand, is informed by the Counter on the terms and procedures of the legal aid system.

Table 7 shows how often referrals to mediation were made in earlier years.

**Table 7: Successfully completed referrals to mediation (2005 - 2008)**

	<i>Total number of referrals</i>
2005	166
2006	1,413
2007	2,137
2008	2,419

Table 8 shows how client inquiries are distributed across the various fields of law. The majority of inquiries concern employment (19%), contract/consumer (23%) and family issues (16%).

**Table 8: Fields of law (2007)**

	<i>Percentages 2006</i>	<i>Percentages 2007</i>
Contract/consumer	20	23
Labour/employment	20	19
Family	14	16
Social security	9	9
Housing	8	8
Criminal	4	4
Immigration	4	4
Administrative	2	2
Other civil cases	19	15

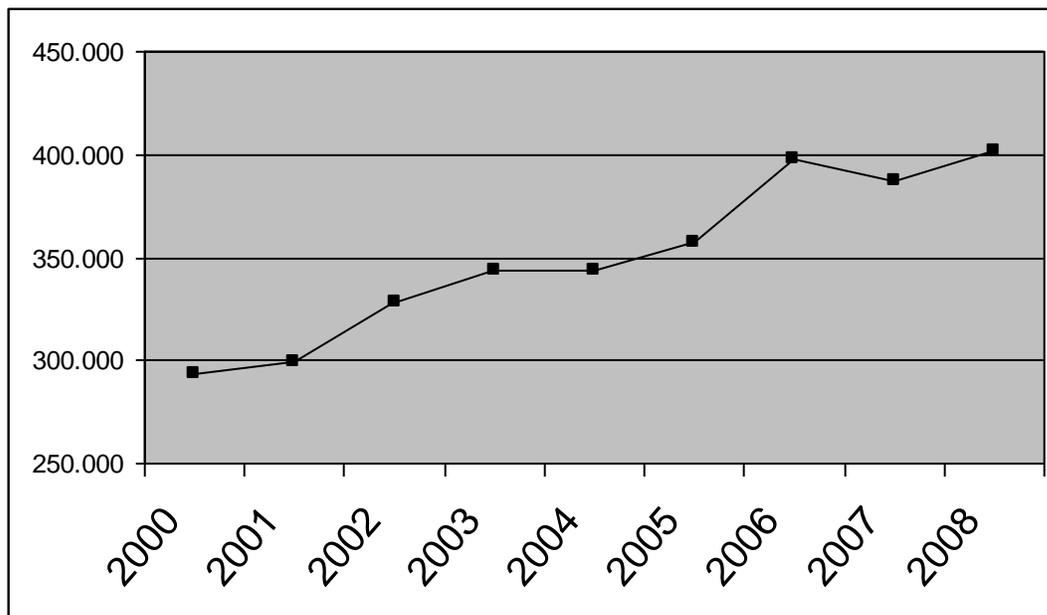
### **3. Certificates: facts and figures**

In 2008 as many as 422,530 legal aid certificates were issued. Since 2000 the number of certificates has raised by 44%.<sup>7</sup> In addition to regular legal aid certificates – 401,712 in 2008 – 15,294 ‘minor aid’ certificates (i.e. for max. three-hour legal aid) have been issued as well as 5,524 mediation certificates. The number of mediation certificates is growing, although still marginal. Figure 1 shows the development, since 2000, of the numbers of regular legal aid certificates issued.

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<sup>7</sup> In 2006 the number of certificates shows a more than average upward trend. This is probably due to the implementation of new procedures concerning the issue of certificates. Procedures to obtain a certificate have been simplified and terms slightly adapted. The number of certificates issued in 2007 and 2008 matches the upward trend since 2000.

**Figure 1: Regular legal aid certificates issued from 2000 - 2008**



Below, figures can be found as regards the fields of law that legal aid certificates are concerned with. Table 9 shows a rise of certificates in all fields except that of asylum.

**Table 9: Regular legal aid certificates, according to field of law and index (n=407,236)**

Jaar	Civil legal aid	Index	Criminal legal aid	Index	Asylum	Index
2000	149,279	100	94,769	100	49,032	100
2001	146,865	98	102,187	108	50,430	103
2002	159,069	107	116,684	123	52,455	107
2003	181,130	121	129,416	137	32,927	67
2004	184,673	124	136,060	144	22,984	47
2005	197,233	132	139,001	147	21,174	43
2006	223,429	150	153,050	161	21,389	44
2007	218,852	147	152,644	161	15,963	33
2008	230,003	154	158,057	167	19,176	39

For every certificate issued, the Legal Aid Boards keep account of the (major) field of law that the certificate is concerned with. Table 10 shows that most certificates concern criminal (39%) and family-related cases (24%).

**Table 10: Fields of law represented in legal aid certificates (2007 + 2008)**

	<i>Percentage 2007</i>	<i>Percentages 2008</i>
Criminal	40	39
Family	23	24
Social security	10	10
Contract/consumer	7	8
Immigration	6	6
Asylum	4	5
Labour/employment	4	4
Housing	2	3
Administrative	2	2
Other civil cases	2	1
<i>Total</i>	<i>100</i>	<i>100</i>

### **Number of legal aid applicants**

Compared to 2000, last year (2008) showed an increase by 28% of the number of applicants that were granted at least one certificate per year.

From 2000 to 2008 the average number of certificates rose from 1.33 to 1.51 per applicant. Apart from a substantial rise in 2002, the number has remained fairly even over the last few years, with a slight increase in 2008.

In 2000 and 2001 the percentage of 'single certificate' clients (i.e. clients with one certificate per year) was slightly higher (78% and 77% respectively) than the following years. In 2008 the percentage amounted to 72%. These figures give evidence that the number of 'multiple' certificate clients (more than one certificate per year) is growing.

### **Scope of Legal Aid System within Dutch population and client profile**

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 resources, qualify for subsidized legal aid.

Holders of a legal aid certificate are predominantly male and between

20 and 45 years of age; certificate holders of under 15 or over 60 are fairly infrequent. A considerable portion of all certificate holders is without a job. Youngsters/students, employed and retired workers are found to be fairly underrepresented, whereas recipients of social benefit and other non-working persons are overrepresented. Certificate holders are also found to be more often divorced and less often married (married persons without children, in particular, are underrepresented), whereas holders living in single-parent families are overrepresented. Furthermore, certificate holders are more often non-western immigrants and live mainly in cities of over 250,000 residents and less often in cities under 50,000 residents.

#### **4. Private lawyers and mediators: facts and figures**

Legal aid in the Netherlands is usually provided by private lawyers/law firms who provide legal advice and represent clients in cases that deal with the major fields of law: 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 Legal Services Counters refers a client to a lawyer, or a client contacts a registered lawyer on his own accord.

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 passes 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 subsidized legal aid.

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

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. Broadly speaking,

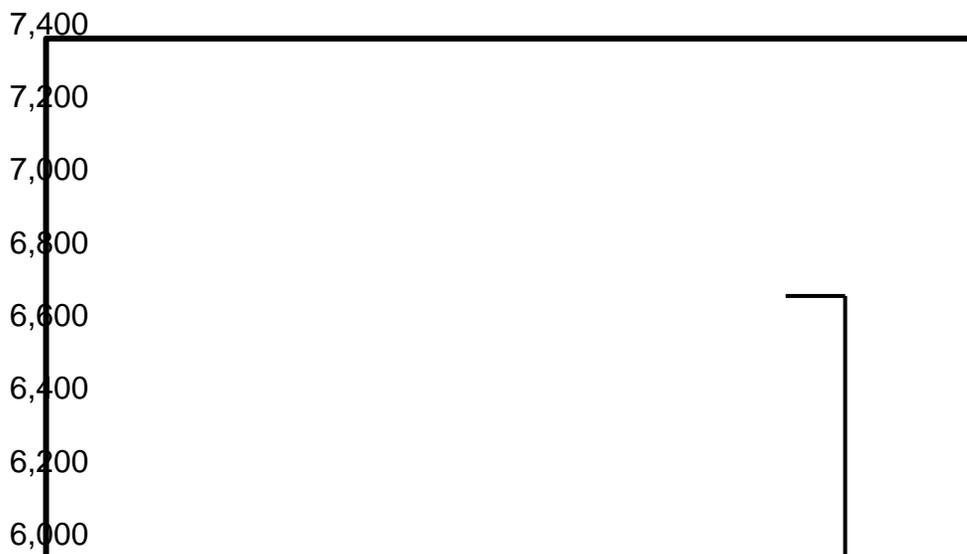
the fees in 2008 correspond to an hourly rate of approximately € 107 (see also Table 11 for the fees paid since 2000). In 1994 the hourly rate was € 26. Over the last decade, fees have been raised substantially, because lawyers operating under the legal aid system were relatively underpaid. The last few years' fees have been raised following a general index.

**Table 11: Hourly rate of lawyers in the legal aid system (2000 - 2008)**

<i>Date</i>	<i>Hourly rate</i>	<i>Index hourly rate</i>
2000-01-01 until 2000-06-30	€ 70	100
2000-07-01 until 2001-06-30	€ 73	104
2001-07-01 until 2002-06-30	€ 76	108
2002-07-01 until 2003-06-30	€ 87	125
2003-07-01 until 2003-12-31	€ 90	129
2004-01-01 until 2004-06-30	€ 94	134
2004-07-01 until 2004-12-31	€ 95	136
2005-01-01 until 2005-06-30	€ 99	141
2005-07-01 until 2006-05-15	€ 99	142
2006-05-15 until 2006-06-30	€ 99	142
2006-07-01 until 2007-06-30	€ 101	144
2007-07-01 until 2008-06-30	€ 103	147
Since 2008-07-01	€ 107	153

In 2008 as many as 7,154 lawyers provided legal aid in at least one case. This number is slightly higher than in 2007.

**Figure 2: Number of legal aid lawyers (2000 - 2008)**



In 2007, 45% of all lawyers registered with the Bar, work within the legal aid system. Contrary to the number of legal aid lawyers, the number of mediators has increased – by 15% – compared to 2006. In 2007, 374 mediators applied for a mediation certificate. Of these, 49% is a registered legal aid lawyer too.

Since 2002 the number of female legal aid lawyers has increased both absolutely and proportionally, and continuously too. In 2008 their number amounted to 45% of all legal aid lawyers. Compared to the percentages of female members of the Bar (40%), female lawyers are slightly overrepresented in the legal aid system.

Up to 2008, 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 2008 the average number of certificates per lawyer has risen by 34%, from 44 to 59 certificates per year.

The number of certificates issued in 2008 has increased compared to 2007, as well as the number of lawyers. In 2007, the number of certificates per lawyer has increased slightly too, i.e. by 2%. Figures also indicate that the vast majority of legal aid lawyers (almost 90%) remains active within the system for years.

## **5. Recent cost-reducing proposals in legal aid**

The governmental contributions on legal aid are increasing each year. For this reason, the government has decided to reduce the annual costs of legal aid with €50 million.

In 2008, the Ministry of Justice started an 'interactive project' in collaboration with many parties involved in legal aid, such as the Legal Aid Board, Legal Services Counters, lawyers, the Council for the Judiciary, insurance companies, mediators, consumer organisations, and scientists. This interactive project has come up with several propositions for improvement of the Legal Aid System that, at the same time, will cut the costs of the system.

It was, among other things, examined whether it would be possible for insurance coverage to play a (minor) role in the system. In first instance, this idea was presented to the parliament; however, this

proposal was met with too much resistance. Too many citizens would be negatively affected by this proposal.

One of the most important (and most cost-cutting) propositions that will be implemented is the idea that governmental organizations should resolve conflicts in a proactive way. If members of these organizations would contact citizens at an early stage, problems that otherwise might lead to lawsuits could be solved through simple communication. In addition, this change in culture of public authorities will not only help to decrease the number of certificates and limit the costs of the legal aid system, but it will also limit the costs for citizens, the judiciary, and the public organizations themselves. At the same time, it will also increase the satisfaction of clients, the work-satisfaction of professionals, and the quality of decisions and procedures.

Another important proposal to reduce the costs, is to further stimulate alternative ways of dispute resolution. An overall change will be to simplify regulation in order to avoid court and legal procedures. When criteria are clear, people won't need legal professionals to define their rights. For instance alimony criteria in divorce cases and exit fees in labour cases.

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