Putting legal aid at a distance: Recent trends in the Netherlands

Nick Huls, Erasmus University, Leyden University, Legal Aid Board, The Hague

Address: Huls@frg.eur.nl

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For a long time, Sweden and the Netherlands have competed for honorary title to the claim of having 'the best legal aid system in the world'.[1] Since 1997, Sweden has been involved in a transformation from public legal aid to private legal expense insurance, which, according to Regan, has not been a disaster in any way.[2] In the Netherlands, too, we are on the eve of important changes in our legal aid system. In December 2002, the Minister of Justice said that the existing system will be reformed and announced a set of interrelated policy changes. Firstly, there will be a sharp increase in clients' first risk element. The hourly rate for lawyers under the system will rise and the Legal Aid Offices will be slimmed down to referral offices. A virtual centre, offering all citizens standard information on frequently asked questions, will replace some of their other services. Consultation services will be reduced to the provision of advice for a maximum of one hour, and no new cases can be accepted.

This paper first aims to analyse what went wrong with legal aid in the Netherlands. I shall argue that the deterioration of the system was not caused by hostile external forces, but by the public management of legal aid itself. In paragraph 1, I describe recent trends since the evaluation of the 1994 Legal Aid Act in the years to 1 January 2003. The second paragraph attempts to explain these trends. I see four contributory factors: the entrepreneurial spirit of l

Legal Aid Office managers, failing supervision by the five Legal Aid Boards, changes of the guard at the Ministry of Justice and finally, weakened support from the Bar and the academic world. Paragraph 3 speculates on the near future.

The Dutch Legal Aid System up to the Millennium

While a fundamental debate on the issue of 'front line legal aid versus judicial counsel' (the assignment system) was conducted in other countries, in the Netherlands we followed a two-track policy. From 1975, a national

[1] Clinton Bamberger, Address to the Polak Committee, Legal Aid

[2] Francis Regan, 'The Swedish public-private remix: The drift from public legal aid to private legal expense insurance', Paper, Oxford, March 2002

network of Legal Aid Offices was set up and at the same time, generous funding was made available to lawyers under the Legal Aid for Impecunious Persons Act (WROM). As a result, legal aid provision arose on a substantial scale within a fairly short space of time.

In the early 1970s, it made little difference to left-wing lawyers whether they found work via an Office or as legal aid lawyers. The political aim was the same: to fill the 'legal aid gap' discovered by legal sociologists. Furthermore, in an era of expansion and redevelopment, the differences were not particularly significant. This changed once the first government led by Ruud Lubbers introduced austerity measures for government finances. Schemes with open-ended financing, such as legal aid, had to come to an end. From 1984, this led to conflicts in the legal aid movement. Bureaucrats (Legal Aid Office staff and civil servants at the Ministry of Justice) and the 'liberal' legal aid lawyers were irreconcilably at odds with each other, when painful choices had to be made at a time of shrinking budgets.

Within the legal aid movement, the Offices were the least 'alternative' and the most government-dominated segment. They were the subject of analysis from the very start. Reports showed how official and formal their form of assistance was, how low their political profile and how unselective their intake procedures. Ties Prakken, the political conscience of the legal aid movement, was a constant critic of the aid provided by state institutions, but others were also critical of the bureaucratic nature of the Legal Aid Offices. Phon van der Biessen went furthest here, calling for the abolition of the Offices and the transfer of funds to legal aid lawyers. In recent times, many legal aid law firms have transformed themselves into mixed or purely commercial practices. The office employees have proved to be a constant factor in the legal aid movement: perhaps not always in the forefront, but very loyal to the ideals of legal aid and in particular, to the clients too.

The Legal Aid Act

The Legal Aid Act (WRB), which came into effect on 1 January 1994, gave the Legal Aid Offices the legal status that they so desired, but at a high price. Because of criticism from the General Chamber of Audit on control of legal aid expenditure, they had to surrender their control of assignment accounts. The autonomy of the Legal Aid Foundations, which were given control of the Legal Aid Offices, had shrunk very significantly and the office staff were placed on the defensive to a considerable extent. Their front line work was regulated in detail and the time for political campaigning no longer qualified for subsidisation. Matters did not improve for the clients either. Client contributions rose and the income limits were lowered. These cutbacks mainly affected the (legal aid) law firms. The number of assignments diminished drastically in this period.

In the early years after the introduction of the WRB, difficult negotiations with the Legal Aid Boards on efficiency improvements, time registration, annual plans and the implementation of all sorts of tools for the planning

and control circus in which they had to parade absorbed all the Offices energies. The 'new commercialism' of the WRB initially encountered strong resistance, particularly from older Office employees. During this period, much of the legal aid movement's political spirit was lost, giving way to a defensive attitude.

The Leeuw Report 1997

As part of the evaluation of the WRB, the Ministry of Justice commissioned the University of Utrecht to evaluate the efficiency and effectiveness of the legal aid system. The main conclusion of the 'Leeuw Report', dating from 1997, was that in comparison with some other sectors, the legal aid had not performed at all badly. Abuse had been reduced to more acceptable proportions, the assignment process had become considerably more transparent and the system as a whole was functioning as it should.

This report was a sign that the defensive attitude could make way for offensive tactics. After all, it was clear that subsidised legal aid was one of the first areas of justice policy where squabbling lawyers had been convinced of the value of production figures, where working processes could be made transparent and where a great deal of information was available on through-put times, etc. In the management concepts based on figures, which are now immensely popular in government, Office staff suddenly emerged as professionals operating in a transparent way, who could account for their actions to the public with self-awareness. The purely business-like approach of the WRB, which employees initially regarded as humiliating, had resulted in a situation that suddenly proved to be ultra-modern.

Evaluation of the Main Points of the Legal Aid Act 1998

The evaluation was performed by the Legal Aid and Legal Professions Directorate (DRJB) of the Ministry of Justice, on the basis of various studies by the Scientific Research and Documentation Centre (WODC), its own policy experience and a round table conference with those directly involved. The report reflects a spirit of tempered satisfaction. The department was satisfied that the main four objectives of the WRB had been achieved, namely providing access to the law for claimants, providing for a sufficient supply of legal aid providers, managing expenditure and modernisation of the organisation. The WRB created five Legal Aid Boards, which became responsible for assignments to legal aid lawyers, payment of fees and funding of the Legal Aid Offices in each court district. The administrative model of the WRB has three 'tiers': the relationship between the Minister and the DRJB, the relationship between the DRJB and the Boards and the interaction between the Boards and the Legal Aid Offices.

The Boards did not have an easy time of it at first. There were many technical start-up problems with processing applications, issuing assignments and paying fees, while the extensive control tasks were not

accepted without complaint by the legal profession or the managing boards of the Legal Aid Offices.

At the same time as the introduction of the WRB in 1994, the remuneration system was drastically altered. Remunerations for lawyers went up 25%. For those seeking justice, the system became more stringent. The client contribution element was increased while the income limits allowing citizens to qualify for subsidies were drastically reduced. Cases involving less than NLG 400 no longer qualified for subsidies and legal persons were almost completely excluded from legal aid. All these tighter regulations culminated in a sharp 'drop in demand', to 100,000 fewer assignments per year. The Boards then quickly sounded the alarm and the WODC investigated the causes. The WRB proved to have far more stringent effects than was the intention, after which the Ministry took various compensatory measures. At present, 47% of the population qualifies for legal aid subsidies.

The second objective of the WRB – sufficient availability of lawyers – does not (yet) give the Ministry any cause for concern either. There are still enough lawyers taking part in the process at present, although there are some concerns about the quality of the available legal aid providers.

The third objective concerns control of spending. The unbridled increases of the 1970s and 1980s have been brought to an end. Any unmanageable elements still remaining come from outside the system regulated by the WRB: the official assignments by the courts and the asylum sector.

The departmental evaluation is less positive about the final objective, the modernisation of the organisation. The Ministry is concerned about the policy-making strength of the Boards, but does not propose any radical changes.

The Franken Commission

The Franken Commission's advisory report is important in terms of one part of the access problem, the level of the client contribution. The report was published on 20 October 1998, so that it could be included in the evaluation. Justice State Secretary Elizabeth Schmitz instructed the Commission to investigate the system of client contributions. The Commission recommended that no major changes be made until the existing subsidy system had had a chance to prove its worth in practice. It did make a practical proposal on the accumulation of client contributions in related legal disputes. The Commission also recommended that the gatekeeper function of the Legal Aid Offices be profiled more clearly, partly by reducing the client contribution if a litigant had been to the Legal Aid Office and by involving lawyers more closely in consulting sessions. But the legal aid community dismissed this idea straightforward

Legal Aid as part of Justice Ministry policy

The Ministry of Justice is accused of losing its grip on important parts of policy, such as immigration and asylum, the Department of Public Prosecutions, the reorganisation of the judiciary and the quality of legislation. The public sense of insecurity is growing but there is a lack of effective tools to measure the performance of the main actors. Just as in the 1970s, there is a crisis of confidence in the Ministry of Justice and, therefore, a need to invest in improving the quality of the state under the rule of law. An exceptionally critical view is taken of the Ministry of Justice and there is fairly general hostility to the growing litigiousness of society. Ministry claims for more funds are not honoured automatically. Politicians demand that lawyers manage their own domain more effectively and subject themselves to modern management ideas, with an emphasis on transparency and performance indicators etc.

In this business-like climate, government institutions such as universities, the police and also the judiciary and the legal aid system are forced to take a performance-oriented and verifiable stance. They are not permitted to compete unfairly with other businesses, but this does not mean that subsidised activities are exempted from competition from private market parties. On the contrary, the Ministries are trying to hive off suitable areas of policy to the private sector.

The legal aid system did not escape this trend. Turnover in the sector amounted to some NLG 450 million a year (including NLG 80 million for asylum cases): 80% of this flowed to lawyers via the assignments (180,000 civil cases, 92,000 criminal cases and 65,000 emergency defence cases), 5% to the Boards and 14% to the Legal Aid Offices, which assisted 240,000 visitors a year during their consulting hours.

Lawyers had been complaining for some time about the low level of the fees. The Dutch Bar Association noted the difference between the NLG 180 per hour allocated to the Offices, while the rate for assignment fees was based on NLG 125 per hour.

A Fresh Political Breeze: Job Cohen

Under Wim Kok's second government, an energetic and ambitious State Secretary took office: Job Cohen. A sector only has a chance of additional government funding if its books are in order and the products can be measured effectively. Once the Leeuw Report had shown that the legal aid system was no longer labouring with an image of poor management of government funds, opportunities to take new courses arose.

The Dutch Bar Association grasped almost immediately that there was scope for additional legal aid claims. After a brief, but intensive lobbying operation, it succeeded in convincing politicians that a substantial increase in the hourly rates was needed to maintain the quality of the system. Shortly before

Budget Day in 1999, Cohen was able to announce a raise in the hourly rates for lawyers from NLG 120 to NLG 150. The legal profession had achieved its first win.

What Happened in the Public Legal Aid Sector?

The Legal Aid Offices expanded their territory in various ways. Firstly, they received permission to extend consultation times from two to three hours. This improved the quality of front line assistance, creating more scope for depth in the work. Consequently, legal aid workers were able to build up more specialisation in their own circles. Secondly, it became possible to appoint lawyers in paid employment. Some Legal Aid Offices made use of this option, which strengthened their position. They were now able to settle cases, including appeals. A third development was that the Offices also started to act for clients who fell (just) beyond the scope of the system. They began to operate in commercial paid practice .

What is 'Paid Practice'?

'Paid practice' refers to the decision, first initiated by the Leeuwarden and Assen Offices, to set up foundations with a commercial practice alongside the Office itself, aimed at those who would fall outside the scope of the legal aid system once the WRB came into force. The sub-foundation operated with the aid of seconded staff and facilities from the Legal Aid Offices. These are not commercial pendants of the front line facility. Paid practice is aimed at integrated settlement of the cases handled.

The main arguments for these services are that there is insufficient supply from the legal profession in the relevant court districts, in both absolute terms and in terms of rates, and that 'paid practice' generates resources that can be applied to maintain the actual Legal Aid Office. The Legal Aid Offices are divided over the question of whether paid practice is desirable. The debate has been conducted primarily at the political level and barely, if at all, among the Offices themselves.

After a consultation round, the State Secretary instructed the Offices in question to wind down the paid practice activities. Her main objections were that too little assurance could be provided regarding the segregation of private and public resources and further, that the legal profession appeared to be adapting the rate structure to the realities of the loss of demand. However, the Second Chamber was unconvinced of this and, in the debate on the Justice Ministry budget, called for a debate on this issue and deferment of a final decision. The relevant MPs wondered whether litigants would be 'left in the cold' in some court districts without paid practice, and whether paid practice was not an innovative idea that was being swept aside too easily. Pending the Second Chamber debate, paid practice once again found itself in a situation of being 'tolerated'.

In 1992, the 'Paid Practice' working group of the Association of Legal Aid Institutions (VRI), the umbrella organisation of the Legal Aid Offices, published a report noting that the Rotterdam and Dordrecht Legal Aid Offices also wanted, or were operating paid practices. The report also outlined how paid practice could be expanded on a national level.

If the initiative had been confined to the Leeuwarden and Assen court districts, this would have been understandable to a degree. There is indeed little (legal aid) law practice in these districts. One could imagine that, if necessary, a temporary exception could be made here. Such an exception would then have to be accompanied by measures to promote the establishment of (legal aid) law firms. However, there is no such justification for a paid practice in Rotterdam, let alone on a national level.

VRI took advice from a commercial consultancy on this issue. The key to the advisory report (August 2000) lay in the 'corporate social responsibility'. Plans are being made for a legal aid agency emphasising 'one touch, one play' legal aid, including paid cases and more professional prospects for legal aid office lawyers.

In a fairly non-transparent policy process, various parts of the advisory report were gradually introduced, at the initiative of the offices themselves.

The Social Context

The introduction of the 'one touch' principle did not take place in isolation. In recent years, many organisations have increasingly opted for the full-service concept, or a one-stop shop concept: when members of the public are assisted with problems, referrals are kept to a minimum. They are offered a total service, in which they can contact the relevant organisation for both simple matters and complex cases. The entire chain of service organisations must be organised as effectively and efficiently as possible.

Benefits for Clients

The benefits of the 'one touch' principle for clients are obvious. In contrast to what used to be the case, clients are now helped to solve a problem from start to finish. At present, they are still often sent from one service provider to another, without receiving any solution to their problem. After all, a client who contacts a Legal Aid Office wants only one thing: that his or her problem is solved as quickly and effectively as possible. At Legal Aid Offices, clients will now be supported by one and the same lawyer, from the consulting session to the time when the case is settled. The benefits are clear: no loss of time through a switch from one assistant to another, no new legal aid provider to get to know and to explain the problem to all over again, etc.

The relationship between VRI and the Legal Aid Boards deteriorated. The offices felt that the Boards kept them too small and some managers made plans to leave the system. One contributory factor was that the Boards had

few possibilities to take action against offices that developed commercial activities. In the north of the country, there were even legal proceedings.

The Verwey-Jonker Advisory Report

Definition of the Problem and Nature of the Study

The key problem is defined on page 5: 'The impression has grown that excessive demands are placed on the commitment of a relatively small group of socially motivated legal aid providers and that willingness to take part in the legal aid system is diminishing, particularly as far as experienced and specialised lawyers are concerned. After the loss of demand following shortly on the introduction of the Legal Aid Act (litigants who found even subsidised counsel too expensive), we are now facing a loss of supply'.

Following a preliminary study of the participation of lawyers in the system, the Institute was this time given a broader assignment, to 'Introduce dynamism into the system, to break through the threatening impoverisation and rigidification'. This formulation takes a middle course between an assignment to conduct a study and a consultancy assignment: give the client, the Legal Aid Boards, arguments to pep up a sector that has little dynamism and is becoming impoverished and rigid.

Potential Solutions

Chapter 4 presents three potential solutions designed to make the system robust: the creation of a legal 'counter'(or kiosk), a quality incentive for the legal aid law profession and the introduction of demand-drive mechanisms.

The report notes on page 81 that there is broad support for 'legal aid for people with a low income (not only for marginalized groups in our society, but also for the middle groups who otherwise risk falling between two stools).' Unfortunately, the researchers do not say what this means for the current limit, which qualifies 48% of the population for the system. Is this standard acceptable or is it too high or too low? This is important, as competition above the limit is easier to defend than below it.

1. The government legal aid counter

Following the large Government Counter 2000 project, the development of a publicly accessible virtual legal aid counter was proposed. This would expand the public function of the Legal Aid Offices and make it more independent. The legal aid counter would also have a physical pre-portal, manned by expert citizens and para-legal staff who can provide clients with simple advice and refer them to the right address (legal aid providers, websites, etc.). An income test can also be performed here, to determine whether someone qualifies for legal aid. If so, he or she will receive a voucher, if required, with which he/she can 'shop' for the right provider. The Legal Aid Boards would have to manage the counter.

2. Quality incentive for the legal aid law profession

Three ways to halt the drain from the legal aid law profession are proposed. The first is through quality assurance and certification, such as the SkiR. The second involves improving the image of the profession. A Legal Aid Law Chair and more attention to this subject in the law curriculum are called for. The Legal Aid Boards could also take an example from the master classes organised by major law firms to interest talented graduates in legal aid law. Thirdly, the report calls for the development of a new method for specific socially excluded groups, with the aim of 'providing tools for the safety net function of legal aid law'.

3. Demand-drive mechanisms

The voucher, or the individual client budget, is the instrument to enable citizens to independently find the right supply to solve their problem. A platform to represent the collective interests of litigants must also be formed. Finally, the researchers want a 'commercial rate' to counter the impoverisation of legal aid law.

These three tracks will lead to a fundamental renewal of the existing system and, partly because of the increasing importance of the frameworks for the Market Regulation, Deregulation and Quality of Legislation (MDW) operation, this will create new tasks for the various actors in the Dutch legal aid sector. The Ministry of Justice must support a platform for the representation of collective interests, the Legal Aid Boards will be relieved of their assignation administration and can grow to become genuine independent administrative agencies (ZBOs) and the legal profession, which includes the 'in practice now defunct Legal Aid Offices' (pg. 91), will become more attractive through appropriate remunerations based on commercial rates.

Supply and demand in legal aid

My main criticism of the report is that the Verwey-Jonker Institute formulates a (far too radical) demand solution for a real, existing supply problem. Still worse, the proposals will worsen the supply problem, for they add the disappearance of the Legal Aid Offices to the drain in legal aid practice. Instead of making concrete proposals to strengthen supply, the report makes proposals for the introduction of a more demand-driven system. A medicine is prescribed that in fact bears no relation to the disease (the excessive demands on a fairly small group of socially motivated providers). This means that the core of the assignment has not been fulfilled: the proposals weaken rather than strengthen the existing system. On page 84, the authors write that 'the split in society is threatening to emerge in the legal profession too', but this puts the reader on the wrong track. The division in society relates to the vulnerable groups who are disadvantaged on a structural basis, while the drain in legal aid practice is more a problem of the protest generation. However, the most socially motivated lawyers have moved with the times, by starting mixed practices or choosing a different

profession. In the future, the provision of legal aid will become less and less a matter for a small, exclusive group of lawyers. Unfortunately, the question that the Verwey-Jonker Institute leaves unanswered is 'how do we interest the legal profession as a whole in sustained participation in legal aid provision? What will that mean for specialisation in fields of legal aid practice, etc.?

The Legal Aid Offices

There is also too little consideration of the second supply factor: how do we strengthen the Legal Aid Offices, so that they can continue to contribute to a robust system in the longer term? After all, the Offices are also struggling with the motivation problems of the protest generation. The older ones among us still remember that the Legal Aid Offices 'were set up to disappear'. This meant that, as soon as the gap in legal assistance provided by the legal profession had been filled, there would no longer be any need for a specific front line facility set up by the government. But it is ironic that today, in 2001, the desirability of the disappearance of the Offices is being discussed at a moment when a loss of supply has been observed. For the time being, I see the replacement of Legal Aid Offices by a government counter as anything but a step in the right direction. Naturally, developments in ICT mean that part of the information and advisory role now performed during consulting hours at the offices can be switched to an electronic counter. However, I do not support the abolition of the consulting service. I regard the Offices as a useful link in the Justice chain, specialised in settling cases quickly and at an early stage, preferably in a non-controversial setting. Precisely in that respect, the Offices have proved their worth over the past 25 years and there is no reason whatsoever to dismantle the infrastructure that has been carefully built up and expanded, simply because some employees would prefer a different kind of work.

It is known that there are calls being made in the Legal Aid Office world to 'abandon the system'. Some directors and employees regard the statutory system as restrictive and want to enter the market and develop into ordinary law practices. Apparently, they are more interested in the middle groups who fall just outside the system than in the people who can only receive justice within the system. I can well imagine that, after many years, some people are tired of providing front line assistance and want to do something different for a change. But their employer, the Legal Aid Offices Institution, does not need to be dismantled simply to meet the altered preferences of these employees. If employees have had enough of the target group or the work, I would advise them to establish themselves as independent lawyers, but then on the same competitive terms as an ordinary law firm. Furthermore, it would be no bad thing for the Offices to have some fresh blood. If it is true that ethnic minorities will make up the majority of the future target group, it is important to attract lawyers and para-legals from that world. I see many Turkish and Moroccan students at lectures and it would indeed be worthwhile to make targeted efforts – together with the universities – to interest them in legal aid practice.

The Ouwekerk Commission (February 2002)

The Commission's core recommendation is a clear segregation of public and private duties, with a public organisation (new-style Legal Aid Offices) performing the public tasks and the private sector (law practices, on the basis of assignments) performing the other tasks. A limited consulting service should be linked to the counter. The currents tasks of the Legal Aid Offices, as laid down in the WRB, will be confined to the counter and that consulting service. The length of a consulting session should be set at one hour, and with the combination of the counter and the consulting service, the counter organisation is expected to be able to meet the vast majority of requests for assistance. In the Commission's view, requests that take more time would be better handled in the private domain. The Commission also advises the merger of the Legal Aid Boards to form one national board, with five implementing organisations.

The Ministry of Justice largely adopted these recommendations: December 2002

A study of supply conducted in 1999 clearly showed that if policy remained unchanged, a gap would develop in the supply of legal aid. This would particularly be the case if the group of experienced lawyers left the system, for example because they reached retirement age. The question is whether the expected intake can adequately compensate for the outflow of experienced lawyers. Over time, tensions have developed in relation to the Legal Aid Office concept, with some of the Offices increasingly feeling a need to provide legal assistance in court proceedings, in some cases even for clients who could afford the costs (paid cases), leading to blurring of the boundaries between public and private tasks. Partly because of this, attention to public duties and consulting hours diminished, leading to deteriorations in access for litigants. At the same time, the legal profession gradually withdrew from some fields of law, giving rise to segmentation and placing pressure on the supply of private legal aid providers.

These and other developments led the Legal Aid Boards and the former State Secretary to conduct the *'Survey of the Future of Legal Aid'*, of which you were notified in a letter of 19 June 2001 (Second Chamber Documents 2000/01 27 400-VI, No. 67). The survey report contains a recommendation for a structural change, in which the Legal Aid Offices are gradually transformed into law firms competing fully in the market. Further to this, the report recommended the creation of a new legal counter, both physical and virtual, which would be accessible to all citizens and have a referral function. The survey report also noted that the scope of the group of litigants with different problems (the 'multi-problem cases') requires special attention.

2. How did it go wrong?

Through the unexpectedly (including to me) swift implementation of the Ouwekerk Commission's proposals, the legal aid offices were transferred into referral centres where only limited legal aid is provided. I consider this a regrettable development, which could probably still be reversed, but in any event calls for thorough analysis.

I see the following reasons why things went wrong with the offices. Firstly, the leading offices, united in the VRN, felt that the Boards kept them too small. Some managers wanted to form a combined front and discussed possibilities for mergers and a stronger organisation. Because they felt restricted by the stringent rules imposed by the Ministry and the Boards, some members of this group wanted to gain more autonomy by finding new sources of funding. Some managers would have preferred to 'leave the system' and start in business for themselves. Some offices in Leeuwarden and Dordrecht continued to operate paid practices, despite repeated attempts to stop them. In the north of the country, there were even legal proceedings between the Board and one of the offices. But relations between the Foundations and the Boards also deteriorated in a more general sense.

The VRN was the first to choose the route of external management consultancy: Boer en Croon made recommendations on paid practice and far-reaching independence for the offices. The OTOP principle also came from this source: in consultations, clients were referred to their own lawyers. This impaired relations with (legal aid) lawyers, as their referrals now constituted only the residual category, and also with the Boards, for they feared that it would lead to neglect of consultations.

The Boards also had great difficulty in determining their position. Although they had the status of independent administrative bodies, in practice, policy was very heavily marked by the Ministry. Co-operation between the Boards left much to be desired, which meant that no strong external profile was developed.

The first joint initiative of the Boards was the engagement of the Verwey-Jonker Institute. In practice, this itself turned out to be a very unfortunate move. Because the Boards could not produce a clear vision on their own, generation of ideas was outsourced to a private consultancy for the public sector. The assignment was formulated as a study, but everything shows that it in fact involved policy advice and consulting. The VWI staff, who had no experience with the legal aid sector whatsoever, introduced all sorts of new ideas drawn from the health care sector, on demand-driven activities, individual budgets, a voucher system and also the 'counter' concept. Instead of the requested reinforcement of legal aid supply, a plea for a new approach to demand was presented. Because the advice had been commissioned, it was then difficult for the Boards to reject the final report, even though fierce criticism was voiced internally.

When the Ministry saw that the response in the field was once again divided, it decided to appoint an external commission itself, the Ouwerkerk Commission, which then wrote its own advisory report in splendid isolation. The Commission did listen to the interest groups, but had no ear for requirements in the field. Ouwerkerk found that all these developments had brought the concept of Legal Aid Offices into discredit and the Commission called for a radical split between the private and public legal aid domains. Law firms will soon make all appointments once again and the offices will be replaced by a virtual counter. The organisation for student financing, which formed the background of one of the Commission members, apparently served as inspiration for these recommendations.

As one of her last policy actions, Justice State Secretary Ella Kalsbeek (Labour) embraced the Ouwerkerk report and her successor, the Christian Democrat Justice Minister Piet-Hein Donner, followed up her work. He has since also linked this change to an even higher first risk element for clients in order to finance an increase in the hourly rate for lawyers. The regrettable low-point, to date, was reached at the public session in the Second Chamber of Parliament on 2 April 2003, where office staff took sharply opposing positions, the Legal Aid Boards kept their distance and the greatest support for the existing system came from social groups.

How can these developments be explained?

The Legal Aid Act further weakened the legal aid offices, which had to surrender a number of tasks to the Boards. Support from lawyers also diminished, because the Bar Association increasingly concentrated on raising the hourly rate. Later, political support for the offices at the Ministry also disappeared. For a long period, the legal aid movement had its own man at the Ministry: initially Wouter Meurs and later Peter Levenlamp. The management rotation concepts in central government mean that directors must not hold their posts for too long, to prevent them from identifying too closely with a particular sector. The political awareness of leaders of the legal aid movement itself had also become underdeveloped. They realised too late that the political force field had changed. They focused far too much on entry matters, and lines of communication with the Second Chamber, which has traditionally had considerable sympathy for legal aid for the poor, were also neglected.

It was therefore not the big, bad outside world, but mismanagement by reckless office directors and weak supervision by distant and divided Legal Aid Boards that gave rise to this policy fiasco.

Outlook

In the future, the counter will be assigned an even larger share in the provision of legal aid. If it succeeds in permanently interesting young lawyers in the field of legal aid law – and not as a test-bed where the profession can be learned through the problems of the poor – that may not even be such a

bad thing. Nevertheless, I am not very optimistic about this alternative. The legal profession is changing rapidly into an ordinary, commercial sector where little of the old *officium nobile* remains. There is a tendency towards specialisation in the 'profitable fields of law', where the largest amounts can be earned. Legal aid law is all but defunct and the hourly rate currently applied by the government, EUR 100, is still far lower than the customary market rates.

I am not optimistic about the prospects for stopping the policy changes now in progress. Perhaps we must simply accept that this legal aid wave – the third, according to Schuyt – has now come to an end. We must await the next wave.

I do not want to sound too nostalgic. I believe that the legal aid wave of the 1960s has simply fronts. Old Legal Aid Offices still staffed solely by employees over 50, whose victories date from very long ago, create a lack of confidence and certainly do not constitute an attractive prospect for the new generation of law students. Perhaps the Counter will create new opportunities for lawyers and para-legals, and perhaps front line legal aid is a type of work that a graduate cannot keep up for an entire career. The need for de-escalating legal aid is exceptionally high. We must seek out new forms and new people.