

## National Report: **Poverty and justice in Belgium: towards improved access to justice for people in poverty. Or how to give the poor access to their social rights?**

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On 17 February 2022, the book "Poverty and Justice in Belgium" was presented. It is the result of cooperation between the Ministry of Social Integration and the Ministry of Justice and collects the views of experts from the academic world and professionals from the social and legal sectors.

The book covers the topics of first- (preventive law) and second-line legal aid (private lawyers), alternative dispute resolution, class actions for vulnerable people, the relationship between bailiffs and precarious families, and the social role of labor courts. The book ends with some conclusions and recommendations to improve access to justice for people living in poverty.

Let us briefly discuss the conclusions and recommendations. But first, the question arises of what is meant by access to justice.

### **Access to justice**

In addition to what the law states about access to justice, the question immediately arises of who has access to justice. People living in poverty experience numerous thresholds, have negative experiences, and view the justice system primarily as disciplining and sanctioning. In addition, they experience today that many of their rights are rather conditional.

Access to justice is a concept with many layers. It is up to politics that determines who has access. It is the organizations and institutions, such as lawyers and courts, that concretely implement access to justice. The most important layer is that of the people seeking justice and the question of whether the previous layers meet their needs and requirements.

Access to justice also has several dimensions. Access to justice is much more than access to the courts. People want a just solution when they have a legal question, problem, or conflict. And the latter often affects society as a whole.

The question is to what extent the basic (human) right of access to justice is an absolute or a relative human right. The poverty movements tend to interpret the concept of access to justice in a maximalist way. For them, poverty is a violation of a human right and a violation of the right to human dignity. The link with article 23 of the Belgian Constitution is made here: the right to a decent life/human dignity cannot exist without the right to legal assistance. This right is an important stepping stone to inform people about their rights and to allow them to be assisted in their journey towards law and justice, whether they have to go to court or not.

Access to justice is constantly changing and evolving in waves

### **Access to justice from a Belgian perspective**

The first wave is accessibility to the law. This accessibility has many thresholds. The question arises of which model of legal aid best serves the people living in poverty. A model that finances the services of lawyers (Judicare model) or a model that organizes a broader and especially social legal aid (Public salaried model)?

The second wave focuses on new ideas and initiatives such as ombudsmen, amicable settlements, collective claims, and the first forms of mediation.

### **Alternative dispute resolution**

The third wave is focusing on alternative dispute resolution (ADR) mechanisms, both inside and outside the courtroom, in public and private contexts, with a view to both prevention and resolution of conflicts. The question arises whether the courts are then less valuable than these informal ways of resolving conflicts. And how transparent are these mechanisms for people living in poverty? These alternative mechanisms are characterized by power differences and demand a lot of skills from the people participating in them. In addition, plain language is an important issue, not only because of plain legislation but also a clear and plain justification of the decisions that judicial bodies take.

### **Prevention is better than cure**

The fourth wave is characterized by the slogan "prevention is better than cure". The previous wave continues, also towards digital solutions. What is striking here is the marketing of the legal professions. The question arises as to how preventive law relates to this. Exemplary is the recovery of debts by the bailiff. Is this judicial officer a public official or rather an independent entrepreneur? The instrumental approach to debt recovery by judicial officers raises ethical and social challenges.

### **A holistic approach**

The fifth wave represents a holistic approach. Legal questions, problems, and conflicts do not stand alone but are situated in a social context. They can be approached from different perspectives. A holistic approach starts from the knowledge of the needs and requirements of the person seeking justice (e.g. Paths to Justice studies).

Multidisciplinary cooperation is required to address these needs and requirements. A welfare-oriented approach with a focus on prevention seems to be the best way to meet these needs. This also means that other financing models must be considered.

Finally, there is not only individual legal aid but also structural legal aid. The example of a class action can contribute to this. This action is a possibility to undertake collective action where rules violate (basic) rights and where these rules obstruct the ability of people living in poverty to lead a dignified life. The courts have a mission here. Especially when social rights are imprecisely formulated, depend on political policymaking, and are promulgated by numerous bodies that sometimes contradict each other. The judge finds himself at the crossroads between adjudication and policy steering (activism).

### **Recommendations**

The stepping stones for a policy are the Sustainable Development Goals. For access to justice, this is SDG 16, specifically 16.3: promote the rule of law at national and international levels and guarantee equal access to the legal system for all. This goal does not stand alone. It is, therefore, best read together with other SDGs such as SDG 1 (poverty reduction) and SDG 3 (health and well-being).

A recent OECD report (2019) starts from these SDGs. It hangs a policy for equal access to justice on the following four questions that also apply to the Belgian context:

- Who experiences certain legal problems?
- Where and when were these needs experienced?
- What works to meet these needs most effectively?

- How can these services be delivered and evaluated?

The first two questions seek to identify and map the legal (potential) problems (nationally, but also for local entities such as municipalities and neighborhoods) and start from the needs and requirements of those seeking justice. The 'Paths to Justice' studies or, in the Netherlands, the 'Dispute Settlement Delta', teach which types of problems exist, whether or not in clusters, and what people do or do not do to tackle these problems. These studies are lacking in Belgium and there is an urgent need for them.

The last two questions refer to the formulation of a policy for integral accessible justice. We group the recommendations into three clusters.

### **An umbrella organization**

The first cluster is legal aid as an important gateway. There is a need for more policy steering, clear operational objectives, concrete parameters, investment in knowledge building of people (experience experts in poverty), and means and especially a service that is designed from a people-oriented approach (e.g. legal design). A policy should preferably focus more on prevention from a multidisciplinary perspective and should better align the first-line legal assistance (preventive law) with the second-line legal assistance (private lawyers). To reach people in poverty, other methods like outreach/inreach are needed and a universal approach is not sufficient. An umbrella organization that monitors and evaluates this access and studies alternative financing systems is therefore no luxury. A problem for this umbrella organization is the current state structure whereby the legal first line belongs to the Communities and the legal second line assistance is a federal competence.

### **Ethical recovery**

A second cluster is alternative dispute resolution. It is an important task for the primary care sector. People in poverty do not know their way and guides (multidisciplinary/experienced) are needed that pay attention to the disadvantages such as the cost and the power differences between parties. ADR friends (experienced experts who assist poor people through the ADR procedure) can play an important supporting role in this.

In this alternative conflict resolution, the current functioning of the debt mediation services is exemplary. The amicable recovery of debts today is characterized by a businesslike and instrumental approach that leads people in poverty to increased costs. To prevent the escalation of debts and costs, it would be best to increase the scope of action of the public mediators by temporarily suspending all debt claims as soon as a debt mediator intervenes. Preventive action also requires more resources and staff.

### **Courts and access to justice**

The last cluster is the courts. In the first place, access to justice continues to require an independent and impartial way of settling disputes. People living in poverty demand that judges learn to understand their natural habitat. The Institute for Judicial Training, together with the Federal Poverty Institute, annually organizes a day on poverty. In addition, the courts need to dedicate themselves to a broad reception, as is the case in the Vlinderpaleis in Antwerp with the

expansion of the Welzijnsonthaal (a collaboration between social workers, private lawyers, and the courts to refer people to the right solution for their problems, legally and socially). The courts are

likewise the places where a claim for collective interests can be intervened where the violated rights of groups, in case people living in poverty, can be settled.

Secondly, there is the digital (r)evolution that should not form additional barriers to access for people living in poverty. Design thinking contributes to the development of online tools for justice from a people-oriented approach. Physical access to justice remains necessary. The development of digital kiosks in the courts requires digicoaches that support people who have not mastered digital skills. But other professionals also have a role to play here, such as public social workers and other welfare organizations to support poor people in obtaining just solutions. Finally, there is a need to monitor accessibility with data and indicators.

The recommendations in the book contribute to a policy of integral access to justice, not only with the judiciary itself but with all actors connected to and by the judiciary such as private and public lawyers, social workers, bailiffs, .....

### **References**

The book is freely downloadable, both [in Dutch](#) and [in French](#).

OECD (2019). *Equal Access to Justice for Inclusive Growth. Putting People at the Centre*, Paris: OECD Publishing, <https://doi.org/10.1787/597f5b7f-en>