

National Report of the Netherlands

ILAG Ottawa June 2019

1. Country details :

The Netherlands

17,181,000 inhabitants (2018)

GDP: \$810 billion, \$49,760 per capita (2018)

The percentage of households living below the poverty line was 8,2 in 2017

Number of practising lawyers in the jurisdiction: 17.784 (01-01-2019)

Number of practicing lawyers in legal aid: 7.072 (2018)

2. Legal Aid Organisation / Authority:

Residing under the competence of the Ministry of Justice & Security (J&S), 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. Being financed by the Ministry of J&S, the LAB accounts to this ministry for its budgetary allocations. The legal aid system operates according to an open end provision.

The Dutch legal aid system is basically a threefold model in that it encompasses three 'lines' that provide legal aid:

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. *Rechtwijzer* combines publicly run guided pathways for common legal problems with online products and services from private service providers.

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.

Ad 1: in more detail: Rechtwijzer

Rechtwijzer is a preliminary provision that helps people find solutions for their legal problems in an interactive manner. In this way, citizens are empowered to navigate easy-to-use processes to solve their problems. In their own time, at their own pace, against low or no cost, and with assistance when needed. www.rechtwijzer.nl combines publicly run guided pathways for common legal problems with online products and services from private service providers meeting Rechtwijzer's rigorous quality standards.

For instance, Justice42 offers the online divorce platform uitelkaar.nl, with public legal aid available for low-income clients. In 50% of the cases, one or both (ex)partners receive public legal aid, showing that a considerable part of the target group of legal aid is capable of using online services. Another private provider on Rechtwijzer is the Arbeidsmarkt Research Institute based at the University of Amsterdam. They offer MagOntslag, a tool for assessing the legal merits of a dismissal case.

Rechtwijzer is continuously being further developed and improved through feedback from users and service providers. New applications, such as a quick scan for multi-problems and a tool for assisting informed decision-making are being developed in close cooperation with respectively a renowned national social services organization Mind Korrelatie and a consumer rights organisation. And new grounds are being tested, such as the experimental space featuring Rechtwijzer and supplementary offline services in local libraries.

Ad 2: In more detail: LSC

The LSC act as front offices that provide primary legal aid. They are fully financed by the Board on the basis of a closed budget.

The organisation 'LSC' is made up of 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 developed 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.

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 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 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). 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.

Ad 3. In more detail: Private lawyers and mediators

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 by 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, victims of crime – 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 were 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.¹ A few examples are presented below. In cases that concern labour (dismissal), for example, lawyers will be paid 11 hours.

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	4/12
Felony	6/8
Minor 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 2019 the hourly rate is € 108,57. This means that for each labour - dismissal case a lawyer is paid 11 times € 108,57 for legal aid. This hourly can be indexed.

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

3. Budget and Spend:

Being financed by the Ministry of Justice & Security, the LAB accounts to this ministry for its budgetary allocations. The legal aid system operates according to an open end provision. Since the beginning of the system in 1994, spending on legal aid more than doubled in 2012. However, the upward trend then came to an end and since 2014 it decreases (see Table below).²

Dutch population and expenditure on legal aid

	<i>1994</i>	<i>1998</i>	<i>2002</i>	<i>2006</i>	<i>2010</i>	<i>2014</i>	<i>2016</i>	<i>2018</i>
Total Dutch	15,300	15,650	16,105	16,334	16,575	16,829	16,979	17,181

¹ Recently, these analyses have been repeated by a commission (Commission Van der Meer). This commission has indicated that the average time spent on cases does not correspond anymore with the fees that are paid to lawyers, because cases became more complex over the years.

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.

population*								
Total expenditure on legal aid in Euro*	184,000	195,000	315,000	398,000	472,000	432,000	423,000	395,000
Expenditure per capita in Euro	12	12	20	24	28	26	25	23

*in thousands

If these expenditures are (roughly) broken down by different topics, you can see the following distribution for 2018:

- Civil: € 116,000,000
- Administrative (including immigration): € 84,000,000
- Criminal (including duty sollicitors): € 142,000,000
- Primary help/Legal services counters: € 25,000,000
- Remaining expenditures: € 28,000,000

4. Scope, Caseload and Eligibility:

Scope first line users: Since we have the BSN (tax and social security number) 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.

Scope second line/certificate users: 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 38% of the 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.

Restrictions on scope:

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 citizen, the aid is mainly intended for persons of limited means who qualify for legal aid.

An application for a certificate is assessed by the LAB both in terms of the client's income and assets and the (financial) significance of the legal problem in question. 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 2019, the applicant's income in 2017 is decisive. In order to qualify for legal aid in 2019, the applicant's income in 2017 should not be higher than € 27,300 (single person) or € 38,600 (married persons / single person with children). The applicant's assets must not exceed € 25,000.³

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.⁴

³ Under certain conditions, applicants of 65 or over are allowed higher maximum assets.

⁴ In 2018, more than 10,000 requests to change the reference year were made. This amounts to 2.5% of the total of legal aid certificates granted. This is checked two years after the application.

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.

Legal Services Counters: facts and figures

The total number of ‘client activities’ performed by all 30 LSC in 2018 amounted to 740,000. This means that in 2018 the counter staff performed a specific activity for a client 740,000times. 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 (57% of the client activities) (see table below).

Table Nature of client activities of Legal Services Counters

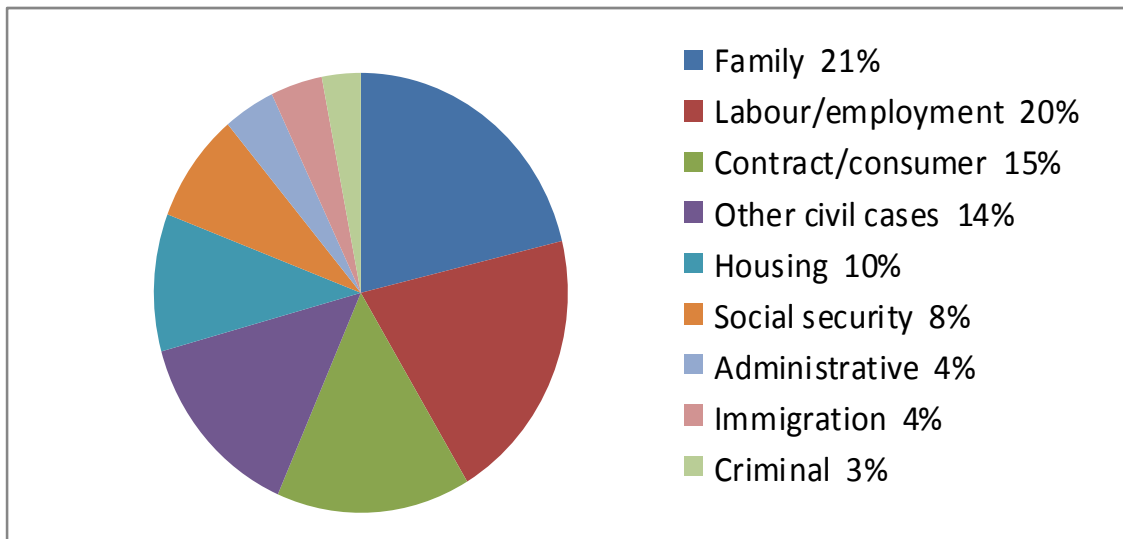
	Total number (2018)	Percentages (2018)
Contact time		
Telephone 0900	409,000	55
Counter	92,000	12
Consultation hour	41,500	6
Telephone, other	14,000	2
E-mail	62,500	8
Non-contact time		
Researching	120,500	16
Total	740,000	100

A client may have contacted the LSC on more than one occasion in 2018. 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 (78%). Clients are also referred to the consultation hours (5%), to lawyers (14%), to mediators (<1%) or to other chain partners (2%).

The figure below shows how client activities at the Legal Services Counter are spread over the various fields of law. The majority of inquiries concern family law issues (21%), employment (20%), and contract/consumer law issues (15%).

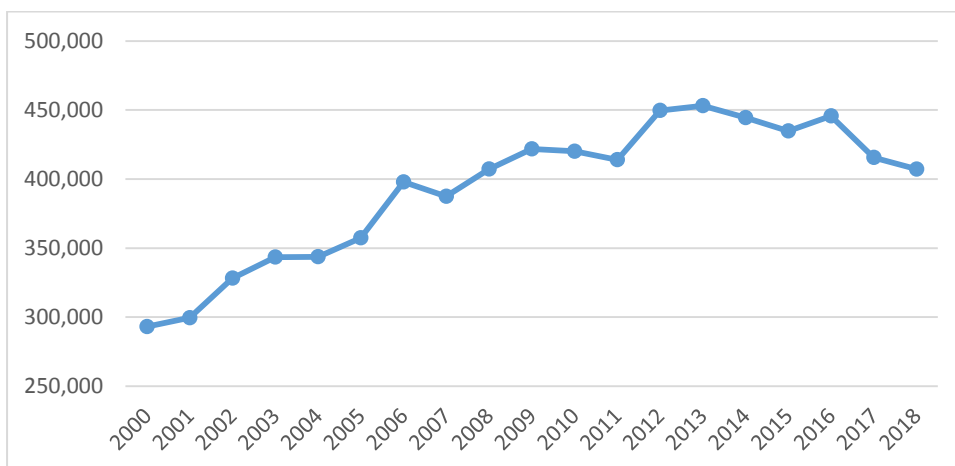
Figure 3 Fields of law (2018)



Certificates: facts and figures

In 2018 407,000 legal aid certificates were issued. Since 2000 the number of certificates has risen by 39%. An upward trend was visible until 2012. Since 2013 the number of certificates issued shows a decline. Whether this is due to the cutbacks in the system is not known with certainty, although it seems reasonable to believe this. Also, what needs to be mentioned is that part of the certificates is not influenced by cutbacks because they are dependent on societal influences, like asylum seekers.

The figure below shows the number of certificates issued since 2000.



In addition to regular legal aid certificates – 381,597 in 2018 – 8,351 ‘minor aid’ certificates (i.e. for max. three-hour legal aid) have been issued as well as 17,215 mediation certificates.

For every certificate issued, the LAB registers the (major) field of law the certificate is concerned with (see table below). This table shows that

approximately half of the certificates concern criminal (30%) and family-related cases (23%).

Table Types of cases represented in legal aid certificates (2018)

	<i>Number 2018</i>	<i>Percentage 2018</i>
Criminal	114,000	30
Family	87,500	23
Asylum	33,000	9
Psychiatric Hospitals (Compulsory Admissions) Act	29,000	8
Contract/consumer	23,000	6
Social benefits	19,500	5
Immigration	19,500	5
Housing	11,500	3
Labour/employment	11,500	3
Social (security) insurance	10,000	3
Administrative	9,500	3
Pre-deportation detention	8,000	2
Other civil cases	5,000	1
Debt restructuring	3,000	1
<i>Total regular legal aid certificates</i>	<i>381,500</i>	<i>100</i>
Mediation certificates	17,000	
Minor aid certificates	8,500	
<i>Total</i>	<i>407,000</i>	

Eligibility:

Given their financial means, approximately 38% of the Dutch population (with a total of 17 million people) would, according to the latest estimates, qualify for secondary 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.

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 civil cases legal aided litigants who lose their case can be held responsible to pay the other side's legal expenses/ costs. In criminal cases convicts (when irrevocably convicted) are obliged to pay back the legal aid they received when they in hindsight appear not to be eligible for legal aid.

5. Quality Assurance:

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. To be entitled to accept legal aid cases, private lawyers need to be registered by 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, victims of crime – additional terms apply. The lawyer must both have adequate expertise and sufficient experience in that particular field. Also, a permanent education system exists, in which lawyers have to earn a certain amount of study/training-points every year in order to keep being trained constantly.

In the Netherlands, the role of the deans of the local bar associations is to cooperate with all institutions which helps to improve the communication in the whole system and to reveal problems in a cooperative and in an informal manner. The deans collect all complaints. Information about the possibility to complain is published on internet and is easily found with google, e.g. for Amsterdam <https://www.advocatenorde-amsterdam.nl/3225/complaints.html>.

Lawyers conduct customer satisfaction surveys themselves. Also, the LAB conducts such surveys regularly. The most recent survey took place in 2017, it showed that clients are satisfied with their lawyer in general. To judge whether lawyers do a good job *legally*, the LAB has asked other legal professionals (judges, prosecutors) to judge the work of lawyers. This research shows that other legal professionals judge lawyers' work mostly positive, although it varies.

In the **Netherlands**, peer review is (only) established in the area of asylum law. In this field of law lawyers came to the agreement that clients are highly vulnerable and have little possibilities to complain if they were dissatisfied with the quality of the legal aid service by the lawyer as they are typically sent back to their home country after their application for asylum is refused. All lawyers decided on the implementation of the peer review system in a democratic vote

and they also elect the peers who conduct the peer review; in order to do that the peers review the files of the lawyers regularly, attends court sessions and monitors new asylum lawyers.

6. Public Legal Education:

The public awareness of the availability of legal aid seems to be good in the Netherlands. From surveys among the population we learn that only few people find it hard to find legal help (either primary or secondary help).

The organisation 'LSC' is made up of 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. Also there is a dense network of more than 7000 lawyers, located throughout the whole country (notice that the Netherlands is quite a small country).

Digitally, there are also possibilities:

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. Rechtwijzer combines publicly run guided pathways for common legal problems with online products and services from private service providers. The Legal Services Counters also have a website that can be seen as a preliminary provision.

7. Alternative Sources of legal services:

Outside the system of legal aid, there are also other possibilities to seek legal help. 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. Also people can seek help at social counselors (social raadslieden) and law clinics (rechts- and wetswinkels, usually linked to universities where law students help people with legal problems). Unfortunately there are no national figures available concerning the amount of clients they help annually. And finally, also some law firms have their own 'pro bono' activities.

8. Holistic legal services:

More and more research is being conducted that puts the client in the centre of attention and focuses on their needs. Both the University of Applied Sciences Utrecht as well as the LAB together with the LSC conduct research into clients who suffer many problems, not only legal, at the same time (“multi problems”). Much thought goes to helping these people in another way than just addressing the legal problems.

Also in Tilburg (“proeftuin Tilburg”) different organisations work together to help clients with judicial problems: library, municipality, LSC and Rechtwijzer/Roadmap to Justice.

Furthermore, the Council for the Judiciary is looking at ways to actually solve the problems of clients instead of ‘just’ making legal decisions. Politically this becomes more and more important.

9. UN SDG Standard 16.3

The developments in the Dutch system encourage a more sustainable solution to the problems people have. Lawyer’s assistance should only be applicable when special expertise is necessary and other solutions aren’t obvious. The idea is to develop a stronger first line with better qualified people. Also to have a focus on an overarching, societal goal for the entire process chain (holistic view) and to focus on the client’s problem.

Furthermore, the developments aim on improving people’s empowerment, in cooperation with municipalities/social work.