

National Report - Belgium

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Introduction

In the earlier reports on legal aid in Belgium, much attention has been given to the legal aid provisions of private lawyers. In this report, the aim is to accentuate the legal aid provisions of the social welfare organizations. Nevertheless, we will also focus on the private practitioners. The relationship between the legal profession and the government has been troubled due to the financial crises and the focus on the latest budget cuts. The private lawyers on the contrary are pushing to increase the legal aid budget, since their remuneration is, compared to neighboring countries, very low.

1. Social Legal aid

1.1. What is it all about?

The notion “Social legal aid” refers to a group of legal services providers, acting as experts to deal with problematic situations, different from traditional legal aid (Van Houtte et al., 1996).

The essential characteristics are: the focus on legal problematic situations of the most vulnerable groups in society; free or almost free services (no market driven pricing); client-centered approach; frontline services (so called “first line legal aid”); mostly set up by private initiatives; being an aspect of a broader and larger service; dealing with individual problems by means of a curative handling, but tackling collective problems also, with attention for preventive actions, sometimes organized by the public sector; sometimes open for everyone, sometimes for specific target groups.

Social legal aid is different from legal first line Legal aid. Since the Act of November 23rd 1998 on legal aid, first line legal aid is defined as legal assistance via practical information, simple legal advice or referral to a specialized instance (Article 508/1, 1^o Code of Civil Procedure). The first line legal aid is organized by the Commissions for Legal Aid (see infra).

1.2. A comprehensive research on social legal aid in Flanders (2011)

In 2011, research was conducted by the University of Antwerp (Faculty of Law) and some university colleges in Flanders, who had a bachelor in Social Work. The report dealt with legal aid, delivered by consumers’ organizations, Municipal Centers for Social Welfare (and their legal aid services), Centers for General Welfare, ombudsman, trade unions, health services, advice centers for migrants, tenant organizations, “houses for justice”, law shops, advice centers for youth and students, and children’s rights organizations.

1.2.1. General conclusions

1. Social legal aid has been professionalized. Historically, just a few organizations delivered social legal aid in the 1960s and 1970s, including consumers’ organizations,

trade unions and health centers, and a few organizations for specific target groups. Nowadays, there is a larger number of organizations and their work is professionalized.

Examples: Centers for General Welfare and tenant organizations (from volunteering to professionals).

2. Social legal aid is often organized in a larger context, e.g. in Centers for General Welfare, dealing with a lot of other types of interventions.
3. The Legal Aid Act of 1998 reorganized the system of legal assistance. We can see three parallel sectors: first line legal aid, second line legal aid and social legal aid. Cooperation should be enhanced for the benefit of the service users.
4. First line legal aid is a federal matter, but the social legal aid consists of organizations for legal assistance in some specific legal matters, organized and financed by the regions and communities. Hence, social legal aid has three legal sources. This sometimes creates problems of coordination.

1.2.2. Specific actors in social legal aid

1. New needs have appeared and led to new types of organizations, like children's rights, asylum seekers, and so on. Legal aid often is one of the ways to deal with new areas of legal problems.
2. Trade unions and health centers have obtained a permanent position in the social legal aid system. Law shops, on the contrary, have disappeared. Initiatives on welfare have achieved a larger scale: professionalization goes hand-in-hand with a lack of individualized social work.
3. There is a fragmentation of the first line services. However, the intention of the lawmaker in 1998 was to create the Commissions for Legal Aid to coordinate the first line, but they didn't succeed in doing so (see infra).
4. The "houses of justice" have a very special role. Their mission is essentially a "logistic" mission for the Commissions of Legal Aid.
5. The Centers for General Welfare have developed and they play an important role in social legal aid. Their general mission is to contribute to a life in accordance with human dignity by giving everyone the possibility to exercise their individual rights. Fragmented initiatives have been coordinated.
6. The municipal centers of social welfare have always played a prominent role in social legal aid. Some still deliver well-organized services; others hire lawyers to do it. They also have specialized in the matter of debt problems.
7. The initiatives for legal aid in housing matters have a specific position. The tenant organizations are funded by the minister of Housing, but the link between housing and welfare is apparent: the option is to deal with general problems of housing; legal assistance is one of the fields of action.

1.2.3. A few other conclusions of the research

1. Origins and objectives: most social legal aid organizations are social organizations, generated by private initiative (non for-profit organizations, like welfare organizations,

law shops, ...) in the field of social welfare sensu lato (trade unions and health centers), or set up by public authorities (ombudsmen, municipal centers for social welfare, children's rights organizations).

2. Target groups: in most of the sectors, the target groups are clearly defined (e.g. tenant organizations). But the centers for general welfare and municipal centers for social welfare have very general or vague criteria. However, they specialize in certain issues and target groups, like vulnerable people, homeless people, clients of the justice system, elderly people, youth, persons with relational, personal or financial problems. None of the organizations work with income-related criteria.
3. Funding: most of the organizations get funding from the Flemish government (e.g. housing and welfare organizations). Others are subsidized by the federal government (Houses of Justice). Sometimes the organizations have a contribution-driven system (trade unions, consumers' organizations). Finally, some have specific funding by the organizing institutions (e.g. Childrens' Rights Ombudsman by Parliament).
4. Legal matters: the legal matters dealt with are obvious for some of the legal aid organizations. Others deal with general problems, but specialize, dependent on the needs of the users and evolutions in society (e.g. debts). Sometimes legal aid is just a part of the "supply" of the organization.
5. Type of services delivered: mostly it is frontline, first line legal aid (advice, information, referral, practical services). Going to court is rather exceptional, but can be envisaged for important questions with a collective or structural dimension.
6. Personnel: some organizations work with jurists and lawyers, others with social workers, or both. Sometimes volunteers participate.

1.2.4. Final remark

In recent contributions about legal aid in general, and social legal aid in particular, a more holistic and so-called "socially responsible" legal aid is advocated. The different players in the field of legal aid have a role to play, because legal aid is part of the public sphere, since fundamental rights are at stake: lawyers and other actors, like institutions of social legal aid should cooperate with the social sector in general (Gibens, 2009; Gibens en Hubeau, 2013).

2. The "Houses of Justice"

A book on the houses of justice was published in 2011, ten years after they were created by the former minister of Justice "Evaluation and perspectives".

The creation of houses of justice was one of the initiatives to contribute to a better integration of the judicial institutions in what is socially and individually expected and needed: their objective is to enhance a better, accessible and humane justice.

The missions of the houses of justice were: advising policy makers on justice matters; supporting citizens in dealing with problems with the justice system; stimulating and enhancing of a human approach in the justice system; looking for alternative solutions as a complement to a traditional judicial approach.

This reflects a diversity of missions. As a consequence, citizens can be confronted with interventions of the houses of justice in very diverse roles: as a perpetrator, as a victim, as a person looking for legal assistance. Houses of justice not only deliver services in the field of legal assistance. On the contrary, they have a lot of missions in civil and criminal law. The main focus is on perpetrators and victims in criminal matters. The persons working in the houses of justice have lots of types of clients, funding channels and partners. The variety of missions is an obstacle for the efficient realization of the more general objective, giving justice a more human face through the elaboration of initiatives on general prevention and first line legal assistance. Moreover, citizens experience a huge barrier when they need information and the interventions of the justice houses reflect a very traditional legal thinking, since the assistance is provided by lawyers with a private practice. On the other hand, the houses of justice have an important contribution in orienting and referring people towards the organizations, which will support citizens with specific questions and problems. However, there is no general policy and vision of how to organize first line assistance in the social and legal field. The current legislation does not provide a transparent structure for the elaboration of the first line function (Gibens & Hubeau, 2011, 179-180).

Important challenges for the houses of justice are the improvement of the legitimacy by focusing on their identity and their complementary role towards the justice system, expertise, quality and effectiveness. Secondly, the collaboration and partnerships within the justice system, as well as with other organizations inside and outside, should be privileged. Thirdly, both the role of the houses of justice in society (often people think they only deal with security issues) and the role towards citizens with legal problems should be demonstrated. Legal aid should meet the five “conditions for a good legal aid”: accessibility, utility, affordability, simplicity, availability (Hubeau & Parmentier, 1990; Snacken, 2011, 310).

3. Developments in the sector of general welfare

Due to fragmentation, a large-scale merger has taken place in the sector of general welfare: from the 1st January 2014 there will be 11 centers (25 centers are currently active) . Of course, this had affected the organization of legal assistance within the centers for general welfare.

A few characteristics of the centers for general welfare (CAW, Centra voor Algemeen Welzijnswerk) (definition of 2002):

- An independent and regional organization for help and support, not being a part of larger social institutions;
- The help is based on the free choice of the client and basic security, confidentiality and anonymity are guaranteed;

- The centers are open for all citizens with questions and problems, especially vulnerable groups;
- The supply of services is easily accessible and varied;
- People get support in their own competences to solve problems or to be referred to other organizations;
- People can receive first aid and support and are helped in identifying their problems;
- Psychosocial counseling can support people in their everyday life;
- Preventive educational programs are developed and recommendations are sent out to policy makers in order to achieve structural changes.

In 2011, there were approximately 150,000 clients. When people have individual, family or relationship problems, often questions arise about their respective rights: in 2011, about 4,6 % of the intakes dealt with these kind of problems. What kind of legal and administrative problems are brought up (about 7.500 in 2011)? Migration, family matters, social security, housing, work-related problems, school problems, general legal problems and administrative incompetence. The services provided for are information (46,3 %), advice, practical services, referral, mediation, interest protection, residential and housing support, and crisis intervention.

4. E-justice

E-justice is a broad term for all activities dealing with legal issues on the Internet. Though the use of the Internet as an entry to the dispute settlement system (and legal aid) is not well-documented with empirical data (Smith, 2012), consulting the Internet is probably the first thing citizens do when they encounter problems with legal aspects or connotations. Within E-justice, a distinction should be made between providing information and providing online dispute resolution (ODR).

Many lawyers provide extensive legal information on the Internet (a well-known Flemish example is Deneve, website), which unfortunately does not always provide correct information. In 2006, the Flemish Government installed a website focusing on social rights and vulnerable groups (Afdeling Welzijn en Samenleving, website). Other non-Belgian examples are the E-justice portal of the European Commission and an interactive tool project Juridisch Loket/Dutch Legal Office.

Accessibility in E-justice is strongly connected to the online skills of citizens, which are limited within certain groups (e.g. poorly-educated and elderly people).

5. Private lawyers

5.1. The legal framework of the organization of legal aid in Belgium

As already situated in previous national reports, we will sketch here the legal aid provisions by private lawyers again. The 1998 Belgian legal aid act qualifies the Bar as the most important provider of legal aid. First-line legal help by lawyers is provided within the framework of the Commission for legal aid. This Commission operates under the auspices of the Bar. The actual counsel is provided by private lawyers. Second-line legal aid, and assistance or representation inside and outside the court, is entrusted to the Bureau for Legal Aid that is established within the local bar (28 in total). No salaried

lawyers are deployed in the legal aid act. On the other hand, the decision regarding legal assistance (free administration of justice) is left to the court itself. However, one should not lose sight that, in Belgium, the Bar does not hold a monopoly on legal counseling services. Therefore, we refer to the previous chapter of this national report where we explained the role of the social welfare organizations and their methods on legal help.

5.1.1. The Commission for Legal Aid

The commission for legal aid was in 1998 the answer of the federal government to the divided and unstructured supply of first line legal aid. There were many suppliers, but no central body existed to help to coordinate the first line legal services or to improve collaboration between the several service providers. At the same time, the bar association was given the opportunity to strengthen its position on the first line. The primary task of the commission is to organize the first line legal aid of practicing private lawyers. The policy of the commission is merely influenced by topics that belong to the jurisdiction of the law society as half of the members are lawyers appointed by the local dean. The other members are appointed by welfare organizations or public services. While the commissions are subsidized by the federal government (department of Justice), welfare organizations are mostly financed by the governments of the local states (Flemish or the Walloon). This situation complicates the working out of a general policy on the first line. And many other organizations, present on the legal services market, are not able to become members, (like unions or consumer organizations) because of their legal structure.

Not only is there no general body that coordinates the different commissions, but also no general policy exists. Every commission works on its own in its own district and acts as each sees fit.

The Commission is composed of members of the local bar (half of the representatives of the commission), members of the local public welfare centers (25 percent) and members of organizations providing legal aid like private social welfare organizations, tenant organizations (the other 25 percent). The Commission is obliged to assemble four times a year. The Commission is presided over by a private practicing lawyer. The legal aid act does not explicitly mention where these meetings should be held. Another act reveals that the Houses of Justice (containing probation officers, restorative justice officers, etc.) has to have conference rooms at the Commission's disposal. But a place for a permanent secretariat has not been provided. In many districts, the permanent secretariat is housed in the offices of the local bars.

In every district (there are 27 districts in Belgium) the Commission has the duty to organize the counseling by private lawyers. The Commissions decide where these free consultations will take place. The consultations are mostly provided in the Houses of Justices or in courts of the Judges of the Peace or in local public welfare centers. Ninety percent of the accredited budget has to be spent on these consultations and the paying of the private lawyers. Because of the fragmentation of the legal advice market, the Commissions support the coordination and collaboration between the different legal aid centers. The 1998 act even provides the possibility to make arrangements on the way these centers could cooperate. It includes the spreading of information about legal aid to the citizens, in particular aiming at the weakest groups in society. Last but not least, the Commission takes notice of its own annual report and that of the Bureau for Legal Aid.

The Commission is entitled to advise the Minister of Justice on legal aid matters. However, this advice is not binding.

The provisions on the first line are restricted to information and advice. If a person seeking justice needs more support, like writing a letter or making contact with the adverse party, this has not been provided within the legal framework of the 1998 Legal Aid Act. This is in contrast with the provisions provided by the welfare organizations that are devoted to special legal areas such as housing, debts, etc. These organizations open files and try to solve the legal problems by writing letters or attempt mediation. They provide – as we have already sketched - a large scope of mostly specialized legal services in a continuous way.

5.1.2. Legal Assistance: The Bureau for Legal Aid

While the first line legal aid is eligible for every citizen, legal assistance on the second line is only eligible after a means and merits test. If someone is not entitled to second line legal aid, he has to pay the lawyer himself or if he is insured, the legal costs can probably be covered by his legal expenses insurance. The bureau for legal aid that is installed in every legal district, and is embedded within the local bars, handles the requests for legal aid. Since 2005, the federal government has been subsidizing the costs of the organization, whereas the 1998 Legal Aid Act diminished a percentage of the remuneration budget to pay the lawyers. Every bureau has to organize itself and determines its own policy.

There are three ways to apply for legal aid. One can consult a lawyer who will make a request to the bureau, one can be referred by a first line organization or one can make a personal request by coming to the bureau.

In special areas like criminal law cases, the bureau will grant legal aid on the request of the investigating magistrate or the criminal court. Since the Salduz jurisprudence and the promulgation of the Salduz-act from the 1st of January 2012, the assistance of an advocate during police interrogations has become more than a hot item. A special duty counsel scheme has been set up in order to represent the suspect before the investigating magistrate. The Flemish Bar Association has worked out a special computer program to organize the assistance of an advocate during the first interrogation in police stations. The computer system enables the police to call one single telephone number where they will be informed of the lawyer who will attend the interrogation. The operator subsequently will convoke the advocate.

5.2. Legal aid in times of austerity

5.2.1. Introduction

The last ILAG conference focused on the Re-visioning Legal Aid in an Age of Austerity. Since the new Belgian government was installed, the primary task of the government was seeking to cut budgets due to the financial crises. As one of her first actions, the Minister of Justice ordered a study on the remuneration of the legal aid on the second line. The legal aid system dissatisfied the government because it lacks control over how legal aid is provided and it dissatisfied the lawyers because of the rather small earnings. In September 2012, the report *Recherche relative au système de rémunération de l' aide juridique de*

deuxième ligne released by the University of Liege and the National Institute for Criminalistics and Criminology was handed over to the Minister.

5.2.2. Content of the report

The report consists of four parts/chapters. The first part gives a statistical overview. The second part shows the results of interviews of the deans of the local bars and the presidents and collaborators of four bureaus for legal aid in Belgium. The third part contains a comparison of the legal aid system in the Netherlands and France. The last part includes a summing up of the encountered problems and some propositions for the reorientation of legal aid in Belgium, focusing on the system of the remuneration of the private practicing lawyers.

The study reveals that there is a direct link between the amount of points gathered by the lawyers and the cases dealt with by them. The researchers estimate that the amount of affairs has increased since 1998 with 329, 26 %: 372, 69% on the Flemish side and 290, 94% on the French-speaking side. Of the eligible persons who applied for legal aid between 2007 and 2010, people with excessive debts represented the most significantly increasing part (+ 402%). Nevertheless, in 2010 it was minors (28 137 files), detained persons (26 502 files), asylum seekers (11 860 files) and foreigners (19 965) who requested legal aid the most. Family law, penal law, immigration law, juvenile law, goods and social law are the most frequent cases dealt with by private lawyers. The researchers conclude that there is a huge difference in consuming points between lawyers but 75% of the lawyers do not exceed 18 points per case. The report offers several hypotheses of why an enormous increase of cases has occurred in a period of ten years. One of the hypotheses is the juridification of society and the increasing involvement of courts and the justice system, while in earlier days many problems were dealt with by family interventions, religious institutions and their representatives or union representatives on the work floor. Or has society and especially the administration caused more legal interventions?

In the second part, the researchers try to find out if the trends in the Belgian legal aid system are also recognizable in the other countries. In the neighboring countries of Belgium, the amount of cases have also increased but in Belgium (+329, 6%) more than in the Netherlands (+46,7 %) and France (29,6%). Although the Belgian legal aid budget augmented with 269,61% in the last ten years, it remained inferior to that of the Netherlands related to the general population. Regarding the organization of legal aid, the three countries have similar methods of gaining access to justice. The eligible criteria, however, differ. While in Belgium the eligible criteria are close to the minimum incomes, in France and in the Netherlands more people are eligible mostly after paying their own contribution. The researchers also link the increase of cases to the augmentation of the amount of lawyers entering the bar and especially those who are involved in doing legal aid cases. In France, 22 974 advocates treated legal aid cases in 2007. In 2011, it was already 25 540, or an increase of 11, 7%. In the Netherlands, there were 6684 lawyers in 2000 who handled one or more legal aid cases, while in 2010, 7 332 private lawyers – or an increase of 9, 7%- closed 430 000 cases. In Belgium in 2004, 2324 lawyers were involved in legal aid matters, while in 2012 there were already more than 4128 lawyers acting in legal aid cases, or an augmentation of 77, 6%. The remuneration rates also vary between the examined countries, though they all use a nomenclature based on a forfeit system.

In the third chapter, one reports the difficulties which are well-known and are reported in the former national reports. In particular, the remuneration of the lawyers is a major point of interest. Also, the person seeking justice is a victim of the legal aid system and the inadequate remuneration of the lawyers because he will be assisted by a lawyer who will earn less than a minimum wage. Salduz complicated the allocation of the small legal aid budget.

The last chapter contains some general conclusions and recommendations. The first idea is limiting access to justice. Small claims will not be eligible anymore, which is still the case. If a person can prove in every possible way that he:

- is living of social benefit (OCMW)
- is a handicapped person
- is an aged person living off a social benefit
- is a person living in social housing
- is a juvenile
- is a foreigner (asking for asylum)
- has excessive debts,

then the president of the bureau will immediately appoint a lawyer.

Detainees and mentally-ill persons will obtain a free lawyer until the moment the lawyer who is sought to defend the person can prove that the designed person does earn sufficiently to pay the lawyer. 78, 99 % of the people who are granted legal aid belong to this category. The report suggests skipping this distinction and introducing a general control of income of all people applying for legal aid.

The next step is improving the control of the eligible criteria. The bureaus cannot verify if the applicant proves his income correctly. He can only rely on the documents he delivers. The idea is to connect the databank of Tax administration to the databank of the bureaus for legal aid (e.g. the Netherlands).

Another recommendation accentuates alternative dispute resolution such as mediation and other ways to avoid time-consuming procedures such as plea-bargaining. Also, small interventions such as writing letters can be left to the first line. The researchers are considering checking on multi-users to ensure there is no abuse of legal aid.

Further on, the report wants to reconsider the augmentation of the personal contributions of applicants or the recovering of the legal aid cost when the applicant receives a lot of money thanks to the intervention of the lawyer.

New ways of financing legal aid is also recommended, like a sort of social security system for legal aid, or the implementation of a new tax on fines.

Finally the reports emphasises that the remuneration system is not transparent. The points-system does not reveal the real time spent on a case and the just remuneration. The Dutch system, where a point resembles an hourly rate, seems to be preferred.

5.2.3. The answer of the Minister of Justice to this report

Although the report concludes that the remuneration in legal aid is not sufficient and not transparent, the minister leaked a note of the front bench where she promotes to control the legal overconsumption and the augmentation of the legal aid volume.

She refers to the coalition agreement that states: The right to legal aid should remain. The government will reform the legal aid system. It will include the ability to investigate the coincidence between legal aid and legal assistance. It will encourage citizens to cover legal expenses insurance. In addition, it will, in particular to avoid procedural delays, plead for stricter and increased performance monitoring and for a high transparency of the legal aid provision. The bureaus for legal aid, based on the information available to the Ministry of Finance, will have to check the income of the persons concerned.

The Minister proposes to introduce a system of co-payment. To be granted legal aid, the applicant will be obliged to pay a sum of 50€ for every procedure and for every instance. It is a way to make the lawyer and the persons seeking justice more accountable and at the same time it will fund the legal aid system.

To control the legal aid budget and even to increase the remuneration, the minister asks for more transparency in migration cases, criminal cases and juvenile cases. She bets on a decrease of a volume of 20% and contracting lawyers to handle a fixed volume of cases.

Small claims under 250 € will not be eligible anymore. The applicant will have to reveal his total income, not only his monthly revenue, but also his savings, his real estate etc. For that purpose, the Tax administration shall offer/provide the necessary data. In concrete figures for dealing with 100 cases per year in migration law, the minister offers a monthly fee (all costs included) of 2 500 €.

It is not surprising that the Flemish and Walloon Law Societies do not agree and that they negotiate with the Ministry, but at the time of this report there were no concrete results.

6. What about the persons seeking justice? : a real danger for social exclusion?

In this national report we have given an overview of two different schemes of problem solving; a welfare approach and a judicare system organized within the framework of the legal aid act. Both these schemes operate mostly independently and are not connected to each other institutionally. The commissions for legal aid are incapable of taking up this role.

The general question remains: is the existence of both schemes a solid answer to the day-to-day socio-legal problems of the most vulnerable people? Although a very well-developed social security system encapsulated in complicated legislation exists in Belgium, legal aid is - except for the welfare approach- not an issue in the social exclusion policy.

Although the legal aid act takes into account that most vulnerable people are the primary goal, no real incentives are provided in the legal aid act to combine legal aid with the fight against poverty.

It seems that social work can be the binding factor to integrate a social-legal approach. From that perspective, legal aid becomes a part of this approach instead of a system that stands on its own and is fitted to the legal profession's needs. It does not mean that private lawyers

nowadays are acting without the appropriate expertise, but their methods are not embedded within a broader perspective on problem-solving in an inter- or intra-disciplinary approach.

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