

Legal Aid in the Netherlands

**a broad outline
Legal Aid Board**

2013

Legal Aid in the Netherlands

This brochure, issued by the Legal Aid Board, provides a broad outline of legal aid in the Netherlands, as well as a survey of the current facts and figures concerned with legal aid.

Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen of the Netherlands has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive state-financed legal aid.¹ The Dutch Legal Aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act (in force since 1994; the last amendment of this law took effect on July 1st, 2011). This Legal Aid Act replaced the prior statutory system that dealt with the supply of legal aid and dates back as far as 1956.

Given their financial means and merits, approximately 36% of the Dutch population (with a total of 16.7 million people) would, according to the latest estimates, qualify for 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.

Residing under the competence of the Ministry of Security and Justice, a body called the Legal Aid Board ('Raad voor Rechtsbijstand') is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. 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. Annually, a Monitor is published that reports on the previous years' situation. The Legal Aid Board consists of five regional offices and one central office.

Being financed by the Ministry of Security and Justice, the Legal Aid Board accounts to this ministry for its budgetary allocations. The system of subsidised legal aid operates according to an open end provision. Public expenditure on legal aid is increasing each year (see Table 1).²

Table 1 Dutch population and expenditure on legal aid

	1994	1998	2002	2006	2008	2010	2012
Total Dutch population*	15,300	15,650	16,105	16,334	16,405	16,575	16,656
Total expenditure on legal aid in Euro*	184,000	195,000	315,000	398,000	440,000	472,000	486,000
Expenditure per capita in Euro	12	12	20	24	27	29	30

*in thousands

Threefold model

The Dutch legal aid system is basically a threefold model in that it encompasses three 'lines' that provide legal aid (see figure 1 for a schematic representation):

1. The preliminary provision of the interactive online application called *Roadmap to Justice (Rechtwijzer)*; see www.rechtwijzer.nl offers digital help by means of a 'decision tree'. It helps people find solutions for their legal problems in an interactive manner. Part of the Roadmap to Justice is the website echtscheidingsplan.nl; this website is aimed at

¹ Constitution of the Netherlands Art. 17: 'No one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law'. Art. 18 '(1) everyone may be legally represented in legal and administrative proceedings. (2) Terms concerning the supply of legal aid to persons of limited means shall be laid down by Act of Parliament.'

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. At the end of this brochure the plans for cost reduction will be discussed in greater detail.

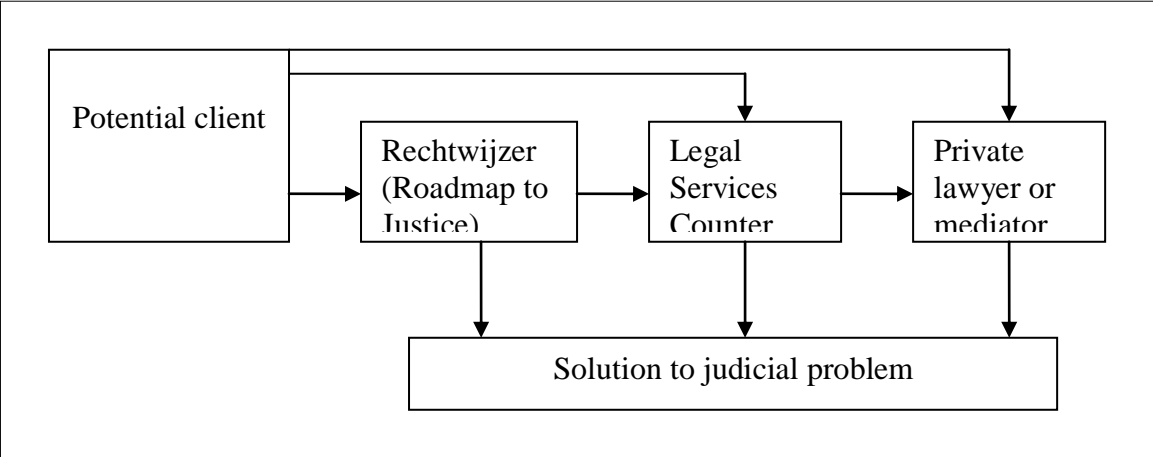
citizens who intend to divorce and who can and want to do so through the Internet. The site also links to a special page for children whose parents are going through a divorce (www.ouders-uit-elkaar.nl). The Legal Services Counters (see point 2 below) also have a website that can be seen as a preliminary 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. If necessary, clients will be referred to other professionals or support agencies. Clients may also 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.

3. *Private lawyers and mediators* provide legal aid in more complicated or time-consuming matters (secondary help). Private lawyers and mediators are paid by the Legal Aid Board 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 extensive cases.

The legal aid system, therefore, is a mixed model, consisting of a public preliminary provision, public first-line and private second-line help.

Figure 1 Schematic representation of the legal aid system



To some extent, trade unions and consumer organisations provide legal aid too. The number of legal aid insurance policies continued to rise for a long time and is still high compared to 2000. In 2000, 14% of the households had a legal aid insurance policy. By 2006 this percentage had doubled to 31%. Later, it stabilised.

1 Preliminary provision: Roadmap to Justice (Rechtwijzer)

The Roadmap to Justice (Rechtwijzer; see www.rechtwijzer.nl) helps users to find their way towards solving a conflict. The application, developed by the Legal Aid Board in close cooperation with Tilburg University, offers users a step-by-step plan that helps them solve problems or conflicts themselves. With each step of the plan, the user is equipped with tools, such as checklists, calculators and so on. The idea is that the user solves the problem himself but, where necessary, he will be referred to an expert. The software covers the fields of family, consumer, housing, labour and administrative law.

In 2010, an online Divorce and Parenting Plan was added to the website. The website echtscheidingsplan.nl is aimed at citizens who intend to divorce and who can and wish to do so through the Internet. Not only married people can use this facility but also registered partners and cohabitating couples (whether or not with a cohabitation agreement). The website provides information about the plan, reference to tools and an interactive film about the divorce announcement, a very important aspect of the divorce process. The site also contains a link to a special page for children of parents who are going through a divorce (www.ouders-uit-elkaar.nl), with an application for and a film about the child interview.

In 2011, a child maintenance calculation tool (KART) and a pension calculator were added to the Roadmap to Justice website. Finally, in 2011, a website was launched for people who have doubts about whether to divorce, who have already decided to divorce or have problems after the divorce (www.wijzeruitelkaar.nl).

The aim of these websites and the applications is to improve public access to law. The Roadmap to Justice aims to encourage self-reliance. It will give people better control of the process and a better understanding of their own position and that of others. The site also seeks to reduce the dependency on professionals. We can therefore speak of a preliminary provision in the legal aid chain in the Netherlands. We are, incidentally, still looking for ways to simplify regulations and laws (for example, developing the 'Do it yourself divorce').

The Roadmap to Justice can be seen as a first help towards settling actual conflicts. The website of the Legal Services Counters, on the other hand, contains lots of documentation and is meant first and foremost to inform visitors on all sorts of legal matters. It is of a much more comprehensive nature than the Roadmap to Justice, which focuses on well-defined conflicts. That is why the Roadmap to Justice software sometimes refers visitors to one of the Counters.

2 First-line legal aid: Legal Services Counters

As outlined above, the Legal Services Counters act as front offices that provide primary legal aid. They offer general information concerning rules and regulations as well as legal procedures. They give advice in simple legal matters, and refer clients to private lawyers or mediators if their problems turn out to be more complicated or time-consuming. All services are free of charge and are provided on the spot or as part of a consultation hour (by appointment). The Legal Services Counters are basically open to any Dutch citizen but the aid is mainly intended for persons of limited means who qualify for subsidised 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 Legal Services Counters (LSC) are themselves not allowed to act on behalf of the client.

The focus, by the Counters, on primary legal aid is meant to serve two major goals. First, the help provided is readily available and free of charge. That is why the Service Counters are generally regarded as easily accessible and fairly 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 Legal Services Counter first.

There are several channels available by which potential clients can apply to the LSC for help: via the website, by e-mail, chat, telephone, counter or during consultation hours (by appointment), see figure 2 below. If the case requires in-depth help by a professional and if the client decides to continue, he 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.

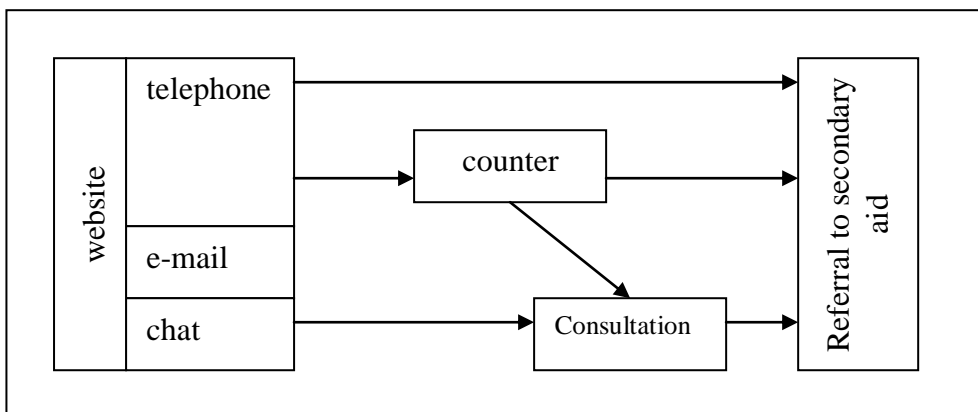


Figure 2 Help provided by the Legal Services Counters (primary aid)

Establishment of Legal Services Counters

Between 2003 and 2006 a major reform took place in the Dutch legal aid system. Legal Services Counters were set up to take over the primary (informative) function of the former Legal Aid and Advice Centres³; the secondary function (extended consultation and actual legal aid) was to be dealt with by private lawyers only. This operation was necessary in order to keep the focus on primary legal aid and achieve more transparency of the legal aid system as a whole.

The Legal Aid Board set up the Legal Services Counters as a separate body. The Legal Services Counters are fully financed by the Board on the basis of a closed budget.

The organisation 'LSC' was established with 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 appearance and are recognisable. 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 three desks. The call centre and rooms for private consultation are located at the back of the shop. There are also shelves with information brochures on legal matters.

In general, each Legal Services Counter is staffed with at least six legal advisers. Some Counters, particularly those in major cities, employ more staff. Since the services of the current Counters do not include extensive legal aid and representation in court, paralegals can be employed too. The Dutch bachelor education system recently started a law course to train students for this purpose.

The legal advisers at the Counters work in turns, both in the call centre (inquiries both by telephone, e-mail and chat), at the counter, and in the consultation rooms. The call centres of all the Counters are interconnected in order to spread the workload evenly and nationwide. Sophisticated computer software, specifically designed for the Legal Services Counters, is at the staff's disposal and helps them to answer the client's questions correctly and quickly. Recently, in addition to the 30 offices, a large new call centre was opened in Zutphen, which employs approximately 40 people.

Legal Services Counters: facts and figures

The total number of 'client activities' performed by all 30 Legal Services Counters in 2012 amounted to 858,914. This means that in 2012 the counter staff performed a specific activity for a client 858,914 times. 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 investigative work and consultation with the other party.

Below, figures can be found concerning the nature of these client activities at the Legal Services Counters. Most client activities consist of contact by phone or at the counter (in total, 76% of the client activities) (see table 2).

³ The former Legal Aid and Advice Centres used to provide both information and legal aid. In the course of time, however, this multiple nature of the Centres caused an increasing loss of insight into the actual proceedings at the Centres. It was therefore considered necessary to maintain a strict distinction between informative services on the one hand and legal aid on the other.

Table 2 Nature of client activities of Legal Services Counters (2012)

	<i>Total number 2012</i>	<i>Percentages 2012</i>
<i>Contact time</i>		
Telephone 0900	379152	44
Desk	270568	32
Consultation hour	63622	7
Telephone, other	25100	3
E-mail	26477	3
Chat	10218	1
<i>Non-contact time</i>		
Consultation other party	4318	1
Researching	79459	9
<i>Total</i>	<i>858914</i>	<i>100</i>

*All figures have been rounded off. That is why the total does not always exactly equal the sum of the separate figures.

A client may contact the LSC on more than one occasion. That's why the number of clients is lower than the number of contacts shown above. In 2012, the number of clients of LSC was at least 200,000. This figure includes the number of registered clients and is therefore by definition an underestimation of the actual number of clients that visit LSC. Clients are estimated to contact LSC on more than two occasions per person per year (about the same or different problems).

The Legal Services Counters provide several kinds of services. The majority deals with providing information and answering questions (80%). The Counters also refer clients to the consultation hours, to lawyers or mediators or to other chain partners.

Table 3 Services provided by Legal Services Counters (2012)

	<i>Percentages 2012</i>
Supplying information and answering questions	80
Internal referral to consultation hour	6
Referral to lawyer	11
Referral to chain partner	3
<i>Total</i>	<i>100</i>

Referrals to lawyers are made electronically, with the help of software that was specifically designed for this purpose. The software helps the Counter's staff to evenly distribute referrals among the lawyers that have been registered 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 Legal Services Counter.

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

Finally, Table 4 shows how client inquiries at the Legal Services Counter are distributed across the various fields of law. The majority of inquiries concern employment (20%), family issues (19%), and contract/consumer (17%),

Table 4 Fields of law (2012)

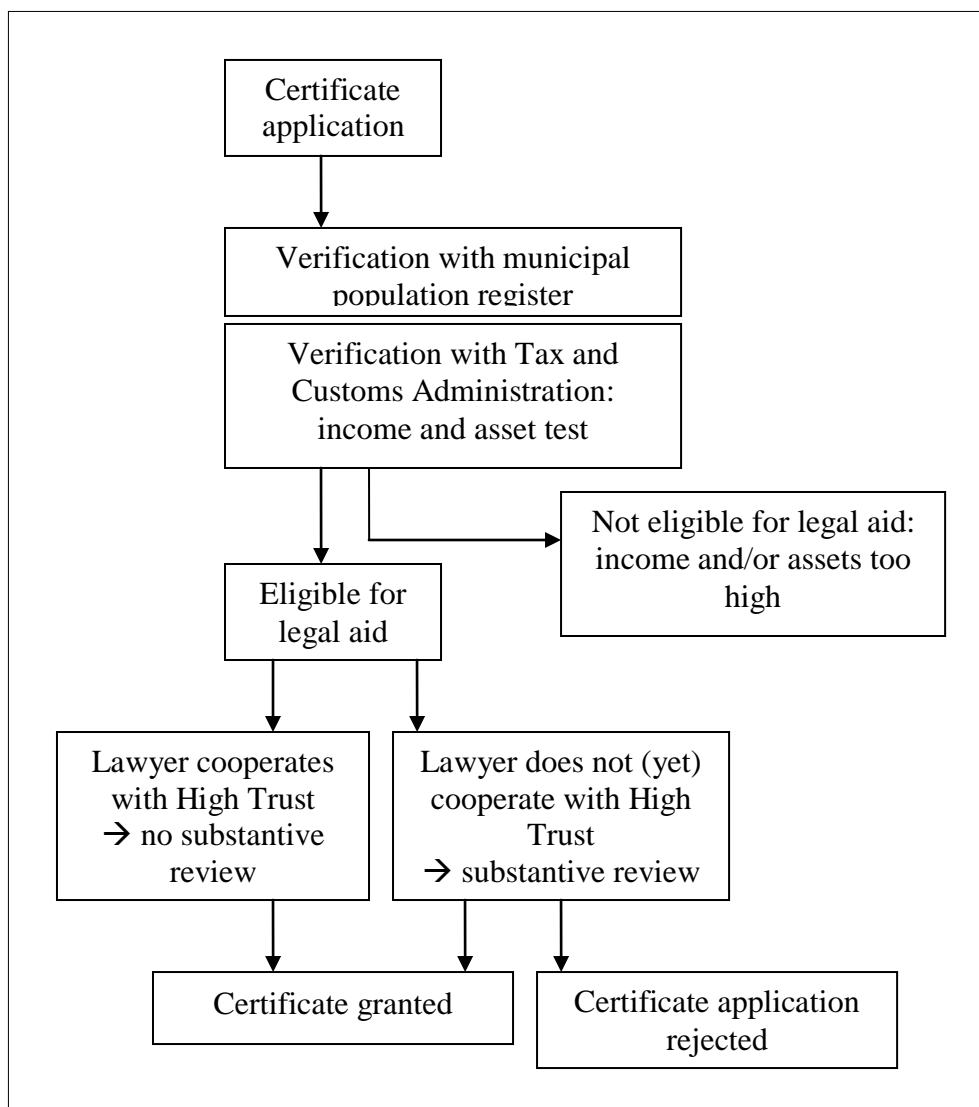
	<i>Percentages 2012</i>
Labour/employment	20
Family	19
Contract/consumer	17
Social security	5
Housing	8
Criminal	4
Immigration	3
Administrative	9
Other civil cases	15

3 Secondary legal aid: Certificates

In order to obtain a certificate, a (Board-registered) lawyer needs to submit an application to the Legal Aid Board on behalf of his client. This used to be done on paper but now it is increasingly done electronically. By the end of 2012, 63% of all lawyers made applications through the web portal and this number is still growing. The Board assesses each application both in terms of the client's income and assets and the (financial) significance of the legal problem in question. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case.

Figure 3 shows the route followed by the application for a certificate before a decision on whether a certificate will be issued is made. The sections below describe the process steps in greater detail.

Figure 3 Schematic representation of a certificate application



Financial assessment of the applicant: eligibility for legal aid

The eligibility for legal aid is based on both the client's annual income and his assets. The Legal Aid Board verifies the client's personal data with those in the municipal population register and checks the applicant's income 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 offices, the Legal Aid Board is able to rapidly obtain information concerning the applicant's income and other available financial means.

Assessment of the applicant's income level (and hence his potential eligibility for legal aid) is based on his income two years prior to the application date, the so-called reference year (t-2). The reason to use that year's income data, is that those data are the latest that are available from the tax authorities. Moreover, those data have generally been found correct and therefore final. So, for a certificate to be granted in 2012, the applicant's income in 2010 is decisive. In order to qualify for legal aid in 2012, the applicant's income in 2010 should not be higher than € 24,900 (single person) or € 35,200 (married persons / single person with children).

However, requests can be made to change the reference year, if the applicant's income in the year of application has decreased substantially compared to that in the reference

year. This holds if the applicant's reference-year income would not make him eligible for legal aid, whereas his present income would. If an applicant wishes to be eligible for a lower contribution, his income needs to have decreased by at least 15% since the reference year.⁴

Eligibility for legal aid, however, is not only subject to the level of income but to the availability of other financial means (such as savings) too. The applicant's assets must not exceed € 20,014 (with a supplementary allowance of € 2.762 per child under 18 in his care).

Table 5 Maximum capital (in reference year 2010) to be eligible for legal aid in 2012*

<i>Every adult</i>	€ 20,661
<i>Supplementary allowance per child under 18</i>	€ 2,762

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

Thanks to online connections with the tax authorities, it has become possible – more accurately so than in the past – to assess the scope of the Legal Aid System and gain a better insight into the socio-economic characteristics of those who apply for legal aid. Estimates are that approximately 36% of the Dutch population would, on the basis of their financial means, qualify for legal aid. The socio-economic characteristics of the certificate users are discussed in chapter 5.

Substantive review High Trust

The right to a certificate is subject to certain income and asset limits, as explained above. Until recently, the significance of the legal problem in question was also reviewed with **each** application for legal aid. However, since the introduction of the new High Trust method (see below) this no longer applies to each application.

Many lawyers regarded the application for a certificate as burdensome and the verification as bureaucratic. Therefore alternatives were considered. To simplify the verification of applications and expense statements, the Board introduced a High Trust method for dealing with the applications for certificates. This High Trust method involves the Board and lawyers working together on the basis of transparency, trust and understanding. A prerequisite for the success of this new method is appreciation for each other's situation and for new ideas.

The High Trust method involves greater compliance on the part of the legal profession, both as to administrative proceedings and working in accordance with the law, fixed procedures and support facilities such as Kenniswijzer (an online tool with information about legislation, jurisprudence and guidelines for the application of certificates). The Board develops specific tools for compliance assistance, such as information and instruction meetings, which are free for lawyers under High Trust. The basic philosophy underlying High Trust is that trust among a larger group of people will more readily lead to positive cooperation and compliance than institutionalised distrust. The first results already establish this. The number of offices that are time consuming for the Legal Aid Board in dealing with applications is fast diminishing, while on the other hand the number of offices that have a good relationship with the Legal Aid Board is increasing even faster. In 2009, the Board started with its first High Trust trial. Since 2011, the Board has been introducing High Trust across the country in phases. In early 2013, 31% of the lawyers registered with the Board are using the High Trust method.

⁴ In 2012, 18,982 requests to change the reference year were made. This amounts to 4.2% of the total of legal aid certificates granted. This is checked two years after the application.

It has become easier for providers of legal aid to apply for certificates without having to send documents along with their applications (unless the tax authorities do not have the client's details). The Board then quickly grants the certificate after assessing the client's eligibility for legal aid. The applications of the lawyers that work together with the Board according to this new method are accepted automatically. This means that the client will know sooner if his application is granted.

Verification takes place in retrospect. There are two ways of verification; lawyers themselves choose which way they prefer to use:

- Either verification on a periodic basis of certificates granted. This is done on the basis of a random sample;
- Or verification on a one-on-one basis of certificates granted after the provider of legal aid has submitted the statement of expenses.

Client's contributions and the diagnosis and triage measure

The costs of legal aid are partly covered by a contribution from the client himself. This personal contribution, though generally covering only a small part of the actual expenses, is meant to encourage clients to carefully weigh the pros and cons of taking a matter to court, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.

Since July 2011, the '*diagnosis and triage*' measure has come into force. The measure encourages those seeking justice to first submit their dispute to the Legal Services Counter. Expectations are that it will be possible to solve more legal issues and problems at an early stage or via a different channel if they are first submitted to the Legal Services Counter: the Legal Services Counter has an enhanced filtering function. As a result, the number of future applications for certificates is expected to drop.

People seeking justice are encouraged to visit the Legal Services Counter first by offering them a discount of € 51 on the individual contribution, should it turn out that a certificate is needed after all. People seeking justice with a certificate and who have not visited the Legal Services Counter first will not receive this discount on the individual contribution. There are also cases in which the discount is automatically given, for example in criminal cases.

In 2012, the contributions to be paid by clients varied from € 127 to € 785 per case (see Table 6). The third column shows what a person pays if he first submitted his problem to the LSC. Individuals whose income exceeds € 35,200 (partner income included) or € 24,900 (single) are not entitled to legal aid.

Table 6 Income and client's contribution, from 01-01-2012

<i>Taxable annual income: married/single with child(ren)</i>	<i>Client's contribution</i>		<i>Taxable annual income: single</i>
	<i>Without discount</i>	<i>With discount</i>	
0 - 24,500	127	76	0 - 17,500
24,501 - 25,400	186	135	17,501 - 18,200
25,401 - 26,700	301	250	18,201 - 19,200
26,701 - 29,700	510	459	19,201 - 21,000
29,701 - 35,200	786	735	21,001 - 24,900

In 84% of the cases of certificates granted, the person seeking justice comes under the lowest individual contribution category.

Sometimes clients are exempted from individual contributions. This applies to all cases where people have been deprived of their freedom against their will. But also 'have-nots' are exempted from paying an individual contribution.

If a client is in need of a second certificate within six months, his contribution is

reduced by 50%; this reduction applies to a maximum of three certificates within six months. If a client has not visited the LSC, this reduction will not be applied. On 1 July 2013, this so-called 'anticumulation scheme' will be abolished; from then on, there will only be a hardship clause.

It is also possible to apply for a mediation certificate. This allows the client to call in assistance of an independent mediator, so as to help him to settle an issue between himself and another party. To stimulate the use of ADR, the client's contribution towards the costs of mediation is generally less than that of regular legal aid. In 2012 the contribution for mediation was set at a maximum of € 102.

In case of relatively simple legal problems, private lawyers are allowed to charge a standard three-hour legal advice fee, of which the client contributes € 41 or € 76, depending on his income (see Table 7).

Table 7 Client's income and contribution towards (max.) three-hour legal aid, from 01-07-2010

<i>Taxable annual income: married/single with child(ren)</i>	<i>Client's contribution to legal aid; max. 3 hours</i>	<i>Taxable annual income: single</i>
0 - € 25,400	€ 41	0 - € 18,200
€ 25,401 - € 35,200	€ 76	€ 18,201 - € 24,900

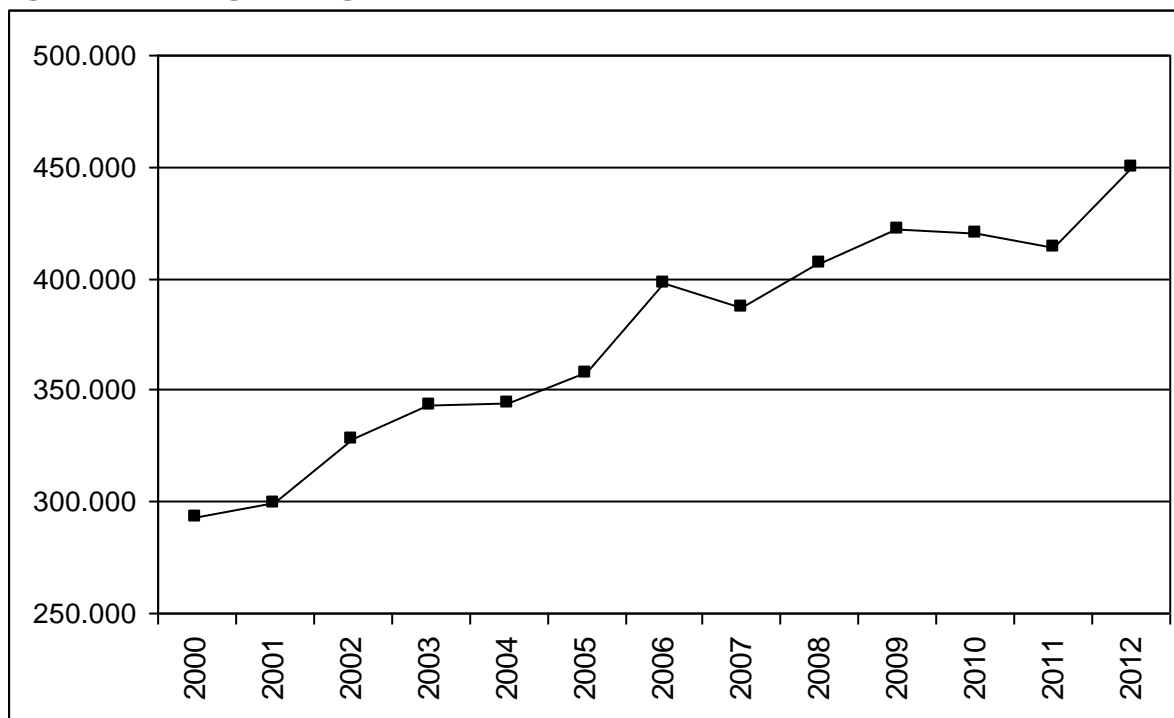
Certificates: facts and figures

In 2012 as many as 449,693 legal aid certificates were issued. Since 2000 the number of certificates has risen by 53%. In 2010 and 2011, this upward trend in the number of legal aid certificates that had been issued seemed to have reversed. For the first time⁵ the number of certificates issued showed a decline. However, in 2012 it went up again. In addition to regular legal aid certificates – 430,614 in 2012 – 10,578 'minor aid' certificates (i.e. for max. three-hour legal aid) have been issued as well as 8,501 mediation certificates. The number of mediation certificates is growing, although still marginally.

Figure 4 shows the number of certificates issued since 2000.

⁵ In 2006 the number of certificates shows a more than average upward trend. This is probably due to the implementation of new procedures. Procedures to obtain a certificate have been simplified and terms slightly adapted. The number of certificates issued in the following years matches the upward trend since 2000.

Figure 4 Regular legal aid certificates issued since 2000



For every certificate issued, the Legal Aid Board keeps account of the (major) field of law that the certificate is concerned with (table 8). This table shows that most certificates concern criminal (36%) and family-related cases (25%).

Table 8: Types of cases represented in legal aid certificates (2012)

	<i>Number 2012</i>	<i>Percentage 2012</i>
Criminal ⁶	154,464	36
Family	108,490	25
Contract/consumer	34,864	8
Social benefits	27,883	6
Immigration	25,085	6
Asylum	24,736	6
Labour/employment	15,991	4
Social (security) insurance	12,647	3
Housing	11,991	3
Administrative	10,309	2
Other civil cases	4,154	1
<i>Total regular legal aid certificates</i>	<i>430,614</i>	<i>100</i>
Mediation certificates	8,501	
Minor aid certificates	10,578	
<i>Total</i>	<i>449,693</i>	

Multiple use

Between 2000 and 2012, the average number of certificates issued per client per year went up from 1.33 to 1.55; this is an increase of 17%.⁷ The number of single certificates

⁶ Including 14,275 pre-deportation detention.

⁷ Because the monitor describes annual developments, the figures relate to individual calendar years. With multiple use this may lead to distortions. A potential client who, for example, received a certificate for legal aid in December 2010 and January 2011 is not recognised as a multiple user. It is assumed, however, that using individual calendar years will not lead to any problems when assessing the trends in multiple use, because the underestimation is a constant.

issued gradually dropped, while the number of multiple certificates went up. In 2000, as many as 78% of the clients had one certificate for legal aid, while in 2012 this had dropped to 70%.

There is a small group of clients that, relatively speaking, use many certificates. In 2012, for example, 54,626 certificates (12.1% of the total number of certificates) had been issued to 8,385 multiple users with five or more certificates (this is 2.9% of the total number of clients).

Types of cases that occur relatively often with multiple users with more than ten certificates concern the Social Assistance Act, administrative law, social security benefits, disputes/complaints detainees, detention of aliens and aliens law.

Multi problems experiment

In 2012, the Legal Aid Board launched the 'multi problems' experiment. The aim of this experiment is to push back multiple use of certificates. This is done by selecting through diagnosis and triage (at the Legal Services Counter) legal problems that hold the risk of multiple use. In these cases, the client is referred to a specialised legal aid provider, who takes the required legal steps but also initiates actions to resolve any underlying problems. The emphasis will be on coordination rather than on enforcement. The legal aid provider concerned is therefore also called case manager.

Since, initially, legal problems with a financial component are the first to be selected, administrators Wsnp (Debt rescheduling act) are (in the early stages) deployed as case managers.

Duty lawyers

Besides certificates, the Legal Aid Board also provides duty lawyers. Each criminal suspect, alien or psychiatric patient who has been lawfully deprived of his liberty against his will receives a visit from a subsidised lawyer. The availability of lawyers is provided for through the defence counsel rota services. Lawyers are scheduled according to a rotation system, so that a lawyer will always be available. In 2012, legal aid provision through duty lawyers took place 127,725 times.

Table 9 Legal aid various duty lawyers in 2012

<i>Kind of duty lawyer</i>	<i>2012</i>
Criminal, incl. juvenile	112,256
Psychiatric	9,859
Aliens	5,329
Total	127,444

Compared to 2009, this type of legal aid increased by 43% in 2012. The reason for this rise lies in the procedural adjustments following the Salduz case. The measure taken following the Salduz case took effect on 1 April 2010.

On 15 November 2011, a new compensation scheme for criminal duty lawyers took effect. Roughly, it comes down to this. A lawyer will be compensated for 0.75 points if at the request of the suspect he provides consultation assistance before police questioning. If the lawyer also provides consultation assistance after the suspect has been remanded in police custody, he may again be compensated for 0.75 points. A lawyer who represents a suspect before and after he is taken into police custody will therefore be compensated for 1.5 points. If a suspect waives his right to consultation assistance before police questioning and (only) asks for a lawyer after he has been taken into police custody, the duty lawyer will be compensated for 1.5 points.

Underage suspects may also be represented by a lawyer when they are being questioned by the police. The lawyer will receive compensation for 1 point, regardless of how often

he was present during questioning. Representation during police questioning is also possible in more serious cases:

- a crime which by law is punishable by a prison sentence of twelve years or more;
- a crime involving a victim who has died or sustained serious physical injury;
- a sex crime which by law is punishable by a prison sentence of eight years or more, or a sex crime that constitutes a ground for a more severe punishment in accordance with article 248, paragraph 2 of the Dutch Criminal Code (the sex crimes for which the applicable Public Prosecution Service instruction prescribes audiovisual registration).

Table 10 shows the various kinds of legal aid.

Table 10 Legal aid provided in 2012 by criminal duty lawyers

<i>Kind of aid</i>	<i>2012*</i>
Consultation assistance (before police questioning)	58,490
Consultation after remand in police custody (following consultation assistance)	21,212
Consultation after remand in police custody (no prior assistance provided)	39,641
Assistance during police questioning	4,550
Assistance during questioning qualified crimes	843

* This concerns the number of recorded expense accounts for duty lawyers measured at the end of December. The actual number of cases handled by duty lawyers during a calendar year may differ because expenses may also be claimed after 31 December.

Experiments within criminal law

To increase the effectiveness and impact of criminal law, the Dutch authorities took several initiatives. The Dutch Public Prosecution Service (OM), for example, opted for a new approach to common crimes. To deal with these crimes, the OM concentrates on a limited number of locations in the country, seven days a week from 8 a.m. to 10 p.m. (the ZSM model). The combined diagnosis and triage of the OM, police, specialists in juvenile crime and lawyers aims to deal with these common crimes faster by community service orders or out-of-court settlements within a period of a couple of days at the most.

Common crimes that by nature cannot be dealt with in this manner are preferably dealt with in accelerated summary proceedings.

For these common crimes to be dealt with prudently, it is important that sufficient lawyers are available in time and flexibly. To increase this availability, the Board is experimenting with means to offer support to apprehended suspects by means of video connections.

4 Private lawyers and mediators working within the legal aid system

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 law: criminal, family, labour/employment, housing, social security, consumer, administrative, asylum and immigration. Private lawyers obtain legal aid cases in two ways: a) one of the Legal Services Counters refers a client to a lawyer, or b) 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 Legal Services Counter 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 with the Legal Aid Board and comply with a set of quality standards. The quality is assured by the Bar.

For some fields of law – criminal, mental health, asylum and immigration law, youth, p&f – additional terms apply. These are mainly concerned with specific training: 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 Legal Aid Board for the services provided. A lawyer does not charge for hours but works for a fixed fee for different types of cases. These fees are 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. A few examples are presented in Table 11. In cases that concern labour (dismissal), for example, lawyers will be paid 11 hours.

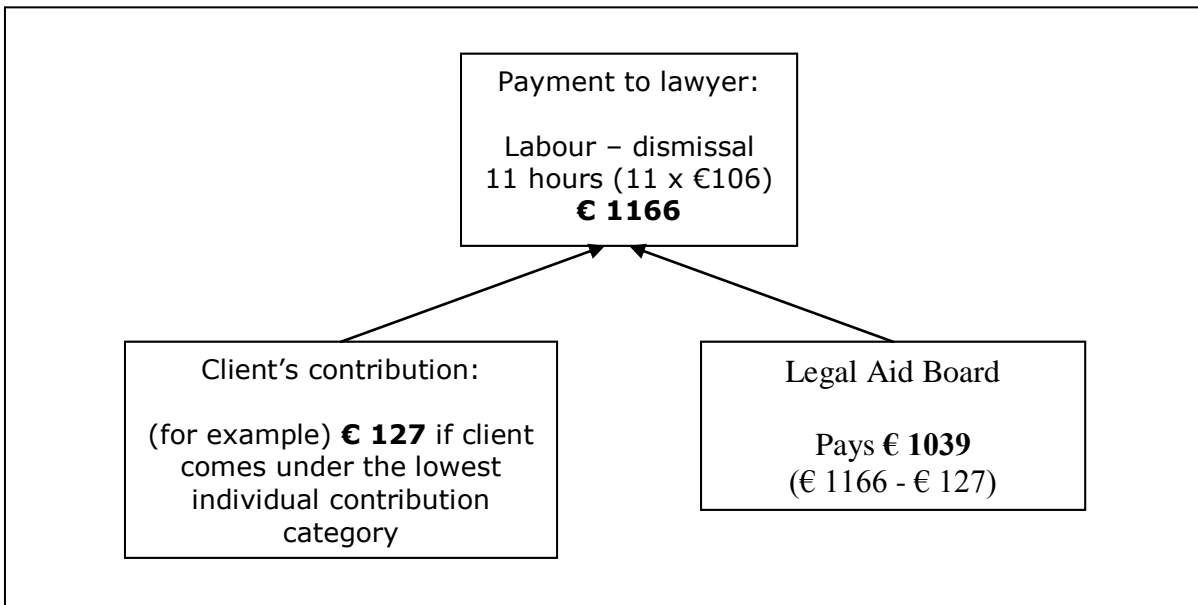
Table 11 Examples of types of cases and the corresponding fixed number of paid working hours

<i>Type of case</i>	<i>Fixed number of paid working hours</i>
Labour: dismissal	11
Divorce	10
Asylum	4
Felony	6/8
Criminal offence	5

In 1994 the hourly legal aid rate was € 26. In 2000 and 2002, fees have been raised substantially, because lawyers operating under the legal aid system were relatively underpaid. Since then, the Ministry determines the hourly rate every year following the annual price index. In 2012 this was € 106. This means that for each labour - dismissal case a lawyer is paid 11 times € 106 for legal aid. In 2011 this was € 112; however, on 1 January 2012, as an austerity measure, the fees were reduced by 5%.

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 Legal Aid Board (see figure 5).

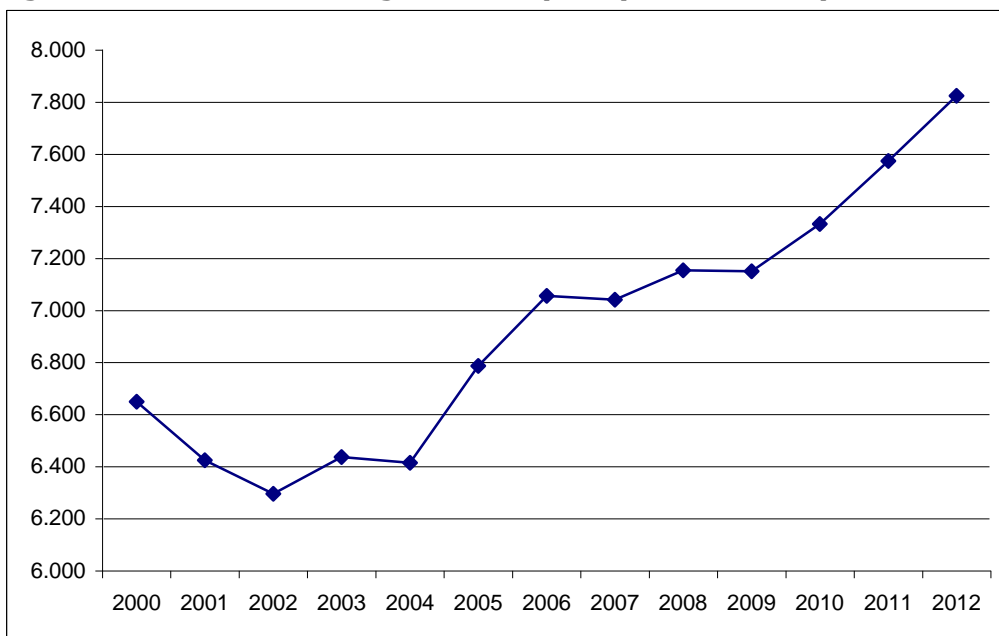
Figure 5 Schematic representation of the payment of the lawyer's bill



Number of lawyers and mediators

In 2012, as many as 7,825 lawyers and mediators provided legal aid in at least one case. This number has gone up during the last decade.

Figure 6 Number of legal aid lawyers (2000 – 2012)



In 2012, 44% of all lawyers registered with the Dutch Bar work within the legal aid system. Just like the number of legal aid lawyers, the number of mediators has increased – by 55% – compared to 2007. In 2012, 579 mediators applied for a mediation certificate on behalf of their client(s). Often, the mediators working in the system also practise as lawyers.

Since 2000, the number of certificates issued has increased, and so has the number of lawyers in the legal aid system. The latter, however, has risen less fast. As a result, from

2000 to 2012 the average number of certificates per lawyer has risen by 31%, from 44 to 57 certificates per year.

The lawyers are quite loyal to the legal aid system. Figures indicate that the vast majority of legal aid lawyers (almost 90%) remain active within the system for at least 5 consecutive years.

From this it can be concluded that, for the time being, there will be enough lawyers to provide legal aid.

5 Users of the system of subsidised legal aid

Number of clients of the Legal Services Counters

Since the Legal Services Counters do not always record client details, the exact number of clients is not known. It is estimated that the Legal Services Counters serve approximately 287.000 clients every year.

The website of the Legal Services Counters was visited by 1.4 million persons in 2012.

Background characteristics of clients of the Legal Services Counter

Since we have the BSN numbers of many clients of the Legal Services Counters, 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 Legal Services Counter 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 from 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 family household. They are relatively often recipients of social assistance and less often pension recipients.

Number of legal aid applicants

Compared to 2000, last year (2012) showed an increase by 32% of the number of applicants that were granted at least one certificate per year.

The percentage of 'single certificate' clients (i.e. clients with one certificate per year) has been falling since 2000, while the percentage of 'multiple' certificate clients (more than one certificate per year) is growing.

Background characteristics of recipients of legal aid certificates

Since we have the BSN numbers of many legal aid recipients, we are able to identify their background characteristics.

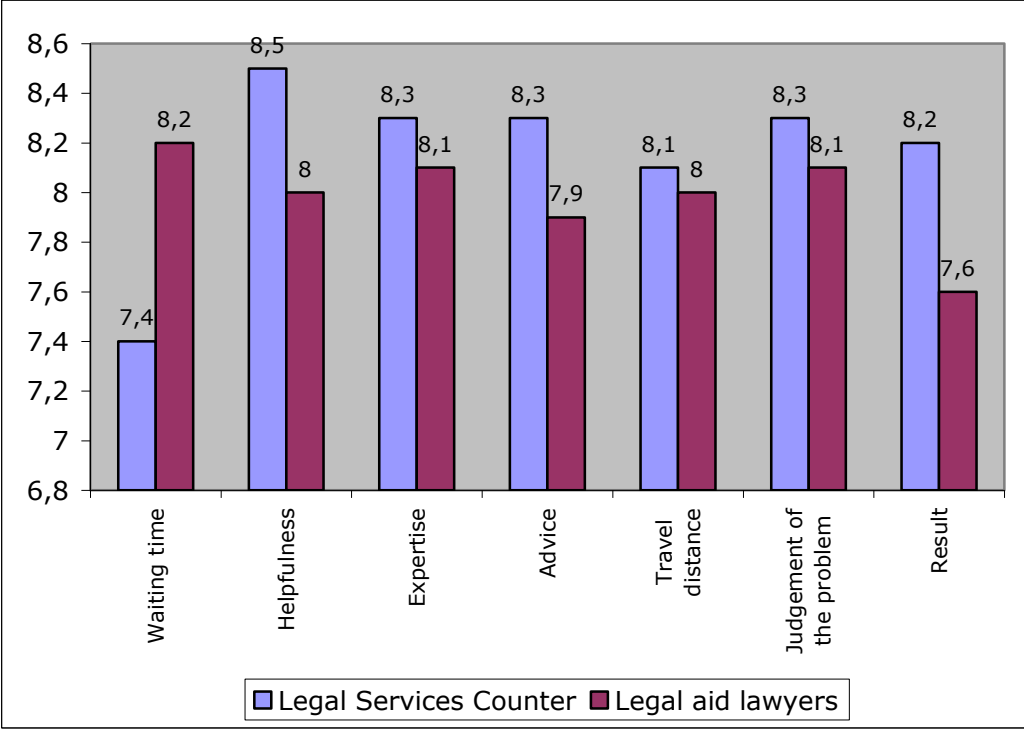
Holders of a legal aid certificate are predominantly male and between 20 and 45 years of age; certificate holders of under 15 or over 60 are fairly infrequent. Youngsters/students, employed and retired workers are found to be fairly underrepresented, whereas recipients of social benefit and other non-working persons are overrepresented. In all, as many as 56% of all certificate holders are without a job. Certificate holders are also found to be more often divorced and less often married (married persons without children, in particular, are underrepresented), whereas holders living in single-parent families are overrepresented. Furthermore, certificate holders 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.

Client satisfaction

Customer surveys have shown that, in general, clients rate the services of the Legal Services Counters as 'good' or even 'very good' (with an average score of 8.2, see figure 7). 'Waiting time' was the item that received the lowest score (7.4). This relatively low score can be explained by the current surge of clients to the Legal Services Counters on account of the 'diagnosis and triage' measure.

The services of the legal aid lawyers are also rated as 'good' (7.9).

Figure 7 Client satisfaction



6 Developments following cutbacks in the system

Public expenditure on legal aid is increasing each year. The reason for this is, on the one hand, the higher fees the lawyers⁸ receive, and, on the other, the growing number of people seeking recourse to the system.

In 2008, the government decided to cut the budget for legal aid by 50 million euros. The programme 'Rechtsbijstand en Geschiloplossing' (Legal Aid and Disputes Resolution) examined the possible options at the time.⁹ This programme proposed a number of measures that were to lead to both improvements in the quality of the service by the government and to structural savings in legal aid and administration of the law. One of these measures is to make public bodies communicate better with their clients in order to avoid simple problems from escalating and possibly end up in lawsuits that require legal aid. This calls for a change of culture towards a more proactive and empathic approach, but it would help to reduce costs – both in terms of expense and effort made – for all parties involved: the clients, the public bodies themselves and the judiciary at large. Client satisfaction would increase too, and so would the work satisfaction of all the professionals concerned, as well as the quality and efficiency of decisions and procedures.

Another major cost-cutting measure is to further stimulate alternative ways of dispute settlement; mediation and the 'Roadmap to Justice' were the first steps in that direction. Other spending cuts that were implemented included increasing the financial significance a case should have before it becomes liable for legal aid, the indexation of the legal costs that government bodies are ordered to pay (this had never happened since 1994) and the introduction of the diagnosis & triage measure, which should encourage people to resolve their dispute at an earlier stage. The expected reduction in volume of business that these measures would lead to would, moreover, generate annual savings of 18.6 million euros on legal matters from 2015 onwards.

In 2010, more spending cuts were announced of 50 million euros a year. To curb this expenditure, the client's contributions for certificates for legal aid were increased across the board; these apply if people seeking justice are unable to submit a diagnosis document (diagnosis and triage measure). On 1 January 2012, the lawyers' fees were adjusted and not index-linked. Moreover, the Legal Aid Board has to make cuts of € 5 million; one of the measures to achieve this is by introducing the web portal.

All client's contributions will be increased in the near future. Furthermore, the client's contribution in divorce cases will go up even more on 1 July 2013. There will also be more attention to multiple use of certificates for legal aid and time consuming cases.

The financial pressure on the system has increased even more due to the legal precedent that was set following the *Salduz* case. Following this judgment of the European Court in 2009, suspects will be entitled, prior to their questioning by the police, to consult a lawyer. The Ministry estimates that this will lead to an additional deficit in the budget for legal aid of approximately 15 million euros. This amount will also need to be compensated for in the budget for legal aid. The Board, however, believes that the increase in the number of *Salduz* cases will not be as high as foreseen in the Ministry's prognosis, and therefore also that the increase in the costs will not be as high, all the more so, since the compensation for consultation *Salduz* has also been adjusted.

The State Secretary for Security and Justice believes that in due course the system of legal aid needs to be reviewed. For this purpose, a consultation paper was issued in late 2011, in which three directions are explored: loan system, tendering, and gatekeeper. He

⁸ From a fixed rate of € 69.88 in 2000 to a fixed rate of € 106.23 in 2012. This is not a permanent increase. In 2011, this amount was € 112.94, and in 2012 the fees concerned were adjusted downwards.

⁹ This programme includes a large number of parties that have come together to give their thoughts on how to improve the quality of the services by the government and how to make structural savings in legal aid and the administration of the law.

subsequently identified the views of organisations that have a stake or otherwise possess the expertise with respect to legal aid.

The Legal Aid Board also gave its views on the proposals. It has come to the conclusion that the proposed solutions do not offer innovation and do not match its vision:

- A loan system does not fit the Dutch circumstances. The Ministry has made a comparison with the German system, but the Legal Aid Board has learned from its contacts that this is not a loan system. Furthermore, in Germany only 15-20% of the legal aid costs get reimbursed. Our current contribution system reimburses twice as much.
- Tendering as proposed carries too many risks. Especially considering the fact that the Ministry proposes to select on quality and award on best price.
- A gatekeeper will not manage the costs. It will introduce even more bureaucracy.

The Legal Aid Board has stated that they are willing to explore a closed budget system, but under the condition that they must be able to control supply and demand. The costs of legal aid should be considered before new laws are implemented. To this day that is seldom the case.

Within these conditions the Legal Aid Board wants to further develop its vision and customise it per jurisdiction for the whole supply chain, i.e. Legal Aid Board, courts, lawyers, independent bodies, mediators, etc. In certain fields, aspects from the proposed directions can be used. Contracting for instance is something that may be useful in Criminal Law, Administrative Law and Family Law. In the latter two jurisdictions, contracting should also be able to be delivered with paralegals as long as the obligatory representation by a lawyer in Family Law is removed. The Scottish Clawback system is something that might be considered for Family Law as well.

Apart from this, the Legal Aid Board proposes to re-evaluate the fee system. These fees have last been evaluated in 1999 and date from the assumed fragmented vision. When people are able to help themselves more easily, are able to receive assistance from paralegals, the lawyer will not necessarily carry out all the activities.

Talks about this consultation paper took place in early 2012. In mid 2012 it was decided to opt for the direction of the gatekeeper, although a definitive decision on this still needs to be made.

Efforts by the Legal Aid Board and relationship with the role of government

The Board wishes to strengthen the self-reliance of citizens who have legal problems by offering a varied and transparent range of provisions. Where necessary, the Board offers customisation. Early diagnosis and triage through the Roadmap to Justice and the Legal Services Counter contribute to easy resolution of problems, stimulating personal initiative, and will lead to a reduction in the number of applications for legal aid with the help of a lawyer or mediator (certificates). With the divorce and parenting plan and the option of online mediation, the Board contributes to the self-reliance of citizens in cases of divorce. The Board thus constantly increases the number of available applications to stimulate self-help.

The success rate of the types of self-help mentioned above will increase, according to the Board, if the Dutch government also takes its responsibility.

This primarily means that the government should set clear and simple rules and standards and explain them well. Citizens should be able to judge whether the result will be realistic. This will help them with many common issues such as disputes about work and maintenance. Citizens should also be able to choose from several options to resolve their disputes. The mandatory engagement of a lawyer or a judge, which is currently

quite common in many fields of law, will increase the costs of subsidised facilities considerably. The government should ensure a level playing field with quality standards that are not tailored to one type of service but which could also be achieved by alternatives such as providers of websites, legal expenses insurers, mediators or dispute resolution committees.

Especially in cases where the government is the opposing party – which is regularly the case – it is the government’s obligation to properly inform the citizens about what they can expect in proceedings and about the assessment criteria. In short, a government that is transparent and fair and delivers a high standard of service to its citizens.

Finally, the government should promote standards for the settlement of conflicts. If we can prepare standard documents for common cases, such as letters, questions to parties, (court) protocols or documents to institute proceedings, we will make things much easier to understand for citizens, opposing parties and legal professionals. It will accelerate the process aimed at finding a solution.

7 In conclusion: current state of the system of subsidised legal aid

The primary objective of the Legal Aid Act is to offer an accessible provision to clients that fall under the scope of the Wrb. The second objective is to offer sufficient top quality legal aid providers.

Citizens entitled to legal aid who have a legal question will have proper access to legal aid if:

1. free access for orientation, information and advice is available;
2. there are no procedural and/or institutional barriers that hinder access to the facilities of the system;
3. the range of subsidised legal services is transparent because information about the various types of providers is available in the system and this information also effectively reaches the system’s target group;
4. secondary legal aid is affordable; this means that the cost should not prevent people with serious problems from using it.

There will be *sufficient provisions for good quality* legal aid if:

5. the system’s target group can avail itself of the required aid when necessary;
6. the users are satisfied with the services in the system;
7. the subsidised legal aid is effective, in the sense that the need for information is satisfied or the case is properly dealt with;
8. the quality is assured, in the sense that the system is well organised and properly implemented.

To what extent are the aforementioned conditions currently met by the system? Figure 8 gives a summary of the extent to which the objectives of the system are achieved.¹⁰

¹⁰ For an extensive analysis of these objectives we refer to the most recent Monitor Legal Aid.

Figure 8 The system of Legal Aid: current state

Conditions	General opinion	Points that need improving or merit attention
Free access for advice and information	+ Free legal aid is available on various websites. LSC offers potential clients free advice and information.	
Procedural and institutional barriers for potential clients	±	The accessibility of the Roadmap to Justice should be evaluated. The d&t measure has an inhibiting effect on some clients.
Transparency	±	The d&t measure is fairly new and, therefore, still relatively unknown.
Affordability and price incentive	±	There may be a stronger price incentive for people who have to pay a higher individual contribution.
Balance between supply and demand	+ Supply and demand seem to be matched.	
Quality of the services	+ <i>Relating to the provision of legal aid</i> The services provided by the LSC and the legal profession are judged as good.	
	± <i>Relating to the Board</i>	Monitoring settlement terms, client orientation and client satisfaction with the Board's services.
Effectiveness of the aid	+ The aid provided by the LSC and the certificates are judged to be effective.	
Quality assurance	+ <i>Only relates to the legal profession</i> This is primarily the responsibility of the individual lawyers, monitored by the Bar. Through the registration conditions the Board guarantees the quality of the legal aid providers working in the system.	

In conclusion, we can say that the system is balanced and performs well. Four of the eight components are assessed positively and the other four components are judged as sufficient. Serious problems seem to be lacking.