

ILAG CONFERENCE PAPER, THE NETHERLANDS:

'SELF-HELP AND SIMPLIFYING THE LAWS'

Peter van den Biggelaar, Executive Director Legal Aid System, Dutch Legal Aid Board

Edwin Borghs, Staff Executive, Dutch Legal Aid Board

1. Introduction:

The incentive to make it easier for people to gain access to the law in a simpler manner has existed for some time in the Dutch system. The Legal Aid Board (*Raad voor Rechtsbijstand*) has for some years focused its attention on offering the public options and alternatives. Where possible, the Board tries to enable citizens to resolve their legal problems either on their own or with simple assistance and also enable them to accept responsibility for doing so as far as possible.

This led in the mid-1990s to the establishment of the Legal Services Counter (*Juridisch Loket*) as a new front office for the delivery of legal advice. This was an important initiative designed to assist citizens by providing an easily accessible service that could help them find solutions to their legal problems. In recent years, there has been a growing realisation that the Legal Aid Board should perhaps focus to a greater extent on the stage before inquiries reach the Legal Services Counter. At the point where the help of a legal assistant is requested in order to solve a problem, the idea has gradually taken hold that citizens themselves should be capable of resolving many problems. This tallies with the view of the Dutch government as set out in a letter to Parliament in 2008 in respect of a project known as the Lasting and Accessible Legal Aid Programme.¹

¹ House of Representatives, 2008–2009 session, 31 753, no. 1

The government formulated it in the following terms: *'In our society citizens are increasingly expected to act independently. The main shift in policy is that citizens must bear greater responsibility for their own well-being and that professional counsellors should take a more backseat role. This means that citizens should have primary responsibility for resolving their own problems and conflicts, without the intervention of the courts. The government sees it as the task of the authorities to support citizens in bearing their own responsibility'*.

The Conflict Resolution Guide (*Rechtwijzer*), the internet application developed by the Legal Aid Board through which citizens seek advice on legal issues, is in keeping with this approach. The Guide has already been discussed by us at previous ILAG Conferences. However, its development is by no means at a standstill. We are continually in search of ways of expanding the application in order to increase the scope for self-help.

Nonetheless, the moves towards more self-help do not occur spontaneously and certain preconditions have to be fulfilled. First of all, the concept of self-help requires that the rules that litigants must observe and be able to apply should be simple and transparent. Second, the trend towards more complex legislation and social structures, as a result of which citizens can no longer see the wood for the trees and are increasingly dependent on help provided by others, must be reversed. Third, it is also necessary for the 'shadow of the law' to function properly. So in cases where citizens do need to apply to the courts to enforce their rights, this possibility must actually exist and the assistance of counsel must actually be available.

2. What form does self-help take in the Netherlands?

Although the preconditions have certainly not yet been fulfilled in the Netherlands either, the development of concepts of self-help is not at a standstill. Indeed, it could even be argued that the concepts have developed precisely because the

preconditions have not been fulfilled. After all, in an ever more complex society the provision of adequate and fast support for citizens in solving their problems is highly desirable and also cost-effective. The characteristic of our system is that it provides options for citizens to solve a problem or potential problem at an early stage, and it is precisely this characteristic that is in keeping with what international research has shown to be the most important criterion: i.e. early intervention and the provision of different options.

Partly on the basis of these data the Legal Aid Board has opted for the creation of a system in which early intervention is possible and citizens are encouraged and helped to take responsibility for their own actions. Adequate accessibility of legal assistance is, after all, one aspect of the core of a properly functioning society governed by the rule of law. The Board therefore takes the view that the following is certainly necessary for citizens with a legal problem:

1. Free initial access to an exploratory procedure, information and advice; this is informal legal assistance and primary legal assistance provided through the Conflict Resolution Guide and the Legal Services Counter respectively;
2. The market for legal services (secondary legal assistance) should be transparent; this is the case if information on the different types of provider, with their recognised specialisations and capabilities and their charges and all additional costs, is available;
3. There should be no procedural and institutional barriers to making use of primary and secondary legal assistance.

The Legal Aid Board strengthens the self-sufficiency of citizens with legal problems by providing a varied and transparent range of services. Where necessary, it offers a customised service. Early diagnosis and triage through the Conflict Resolution Guide and the Legal Services Counter contribute to the simple resolution of problems, encourage citizens to display initiative and help to

reduce the number of requests for legal assistance to be provided by a lawyer or mediator (assignments). In divorce cases the Board helps citizens to help themselves by means of the divorce and parenting plan it has developed and through the provision of online mediation. The Conflict Resolution Guide is in this way being expanded to include applications aimed at promoting self-help.

A major advantage of these initiatives is that citizens have an answer within reach more quickly. In this way the Legal Aid Board can protect citizens from interminable legal proceedings. Many people allow their lives to become dominated by such proceedings. In the meantime their lives are on hold. The sooner the decision is made, the better it is for the citizens concerned and the sooner they can get on with their lives again. 'No' or 'not feasible' are therefore also answers to questions from people seeking to enforce their rights. Naturally, however, one has to explain the decision and why the person concerned cannot enforce his or her rights.

2.1 Strengthening the role of the Legal Services Counter and expanding the function of the Conflict Resolution Guide and triage

The Legal Aid Board is looking for ways of expanding the function of the Conflict Resolution Guide and strengthening the role of the Legal Services Counter. This desire to expand the operation of the Conflict Resolution Guide and strengthen the role of the Legal Services Counter is based on the assumption that problems that now result in legal proceedings could more often be resolved by citizens themselves if they were to receive more and better information (Conflict Resolution Guide) and more support (Legal Services Counter), or that such problems might well be suitable for an alternative form of dispute resolution. In this connection the measures are expected not only to deliver the best resolution to existing disputes, but also to ensure that the resolution is more often achieved by citizens themselves and requires less involvement of the courts and the Bar.

This could produce a saving both on the administration of justice and on legal aid (i.e. subsidised legal assistance).

The measure to 'strengthen the role of the Legal Services Counter' is aimed at strengthening its primary assistance function. The aim is to ensure that in the future the Conflict Resolution Guide and the Legal Services Counter are used more often by citizens with problems. Citizens will be encouraged to use the Legal Services Counter by the provision of a discount on the contribution payable by them for legal aid.

The aim of this approach is to prevent the unnecessary 'juridification' of problems and to encourage self-sufficiency on the part of litigants. The provision of extra services to clients is the main way in which it is thought the role of the Legal Services Counter could be strengthened. Although the interests of the client take precedence, there will be no representation of these interests. The activities of the Legal Services Counter must continue to consist solely of clarification of the issues (making the right diagnosis) and providing information and/or advice, albeit to a greater extent than at present.

By employing the tools of diagnosis and triage through the Legal Services Counter and Conflict Resolution Guide the Legal Aid Board is working:

1. to strengthen the self-sufficiency of citizens;
2. to achieve an early resolution of legal problems, i.e. before the case escalates ('de-juridification');
3. to provide an adequate and timely referral to the appropriate services where the provision of information and advice and the clarification of issues by the Legal Services Counter and the Conflict Resolution Guide are not sufficient;
4. to provide an adequate and timely referral to a provider of legal assistance (lawyer or mediator) where the provision of information and advice and the

clarification of issues by the Legal Services Counter and the Conflict Resolution Guide are not sufficient.

The aim of this approach is to ensure that about a quarter of the over 400,000 cases that are currently assigned directly to a lawyer are first submitted for advice to the Legal Services Counter. Ultimately, it is expected that approximately 10,000 of these clients will be helped solely by the Legal Services Counter and that 90,000 will receive a discount on their own contribution for legal aid in the event of an assignment of counsel. A reduction of the client's own contribution is the bonus held out as an incentive for visiting the Legal Services Counter first.

The Legal Aid Board also has high hopes of the expanded function of the Conflict Resolution Guide. The Conflict Resolution Guide is an interactive Internet application developed by the Board in association with the University of Tilburg and with the assistance of panels of clients and experts established to work on improving and expanding the Guide through a process of permanent interaction. The Guide consists of a 'conflict tree' that provides citizens with customised information in the event of disputes in various fields, for example family disputes, consumer disputes and disputes with public sector bodies.

The aim is to equip the staff of the Legal Services Counter and Citizens Advice Bureaus to deal with cases where citizens approach them directly rather than through the website.

The purpose of the Conflict Resolution Guide is to boost the capacity of citizens to resolve problems themselves. Although it can be assumed that citizens would prefer to resolve disputes as quickly, effectively, permanently and efficiently as possible, this is not to say that they will succeed in this in practice. If they are to succeed, citizens need not only the will to do so but also the requisite capabilities. In this connection an important capability is the ability to analyse

their own problems, identify potential solutions and weigh up the pros and cons of the various courses of action. This is no easy matter. The Conflict Resolution Guide has been developed to assist them in making these decisions.

By using the Conflict Resolution Guide citizens should be able:

1. to make a better assessment of the causes and nature of their problems and their relationship with the other party;
2. to find out what the outcome has been for other people confronted with similar problems (i.e. what they can expect in a particular case);
3. to determine what they can still do themselves to resolve the problem and what is no longer possible;
4. to find out the different routes by which the dispute may be effectively and efficiently resolved in the best possible way in the given situation.

2.2. The divorce plan

The Legal Aid Board is slowly expanding the Conflict Resolution Guide to include new applications for citizens. An example is the divorce plan module. This is an electronic aid for couples wishing to arrange between themselves the consequences of their divorce. The module provides users with a structured consultation framework within which they can achieve a solution and/or settlement for a number of subjects by means of problem-solving negotiation. Use of the divorce and parenting plan is free of charge.

The basic assumption is that couples who are divorcing do not usually have a clear picture of what will happen. By developing this module the Legal Aid Board is trying to ensure that divorcing couples are aware at an early stage of the consequences of the divorce and to enable them to make agreements together about its consequences and to arrange for the various aspects of the divorce to be regulated all at once. The underlying idea is that agreements made in this way

by the partners themselves are more likely to have their backing than a decision imposed by a court. They are therefore more likely to honour the agreement and will be better placed to make new arrangements if the occasion arises. It is also assumed that a concentrated approach to the points in dispute between the parties will prevent escalation and stagnation on particular aspects.²

The communication between the partners or ex-partners, as the case may be, takes place online. The advantage is that the parties then have the opportunity to reflect quietly on the proposals that they can make to each other through the website. The data in the file are accessible only for the partners or ex-partners. The plan operates very simply. A party logs in at www.echtscheidingsplan.nl and makes a digital file. He or she then starts to answer the questions. Once the answers are complete, the party closes the file and sends the login code to his or her partner or ex-partner. The latter opens the file and in turn answers the questions, indicating whether he or she agrees with the proposal made by the other party. Access to all kinds of information is available while going through these questions. Explanations are given for practically all aspects and examples are available and can be consulted. The partners or ex-partners consult together until they are in agreement on all issues.

The plan covers all kinds of subjects that are important in any divorce: arrangements for access to the children, the division of care responsibilities, the division of the assets and liabilities, pensions, maintenance for children and partner, et cetera. For example, a tool for calculating child maintenance can be used while completing the divorce and parenting plan. The plan also operate as a checklist: the litigant can be certain that he or she is making agreements about all necessary points and is not forgetting anything. Once the plan is completed online the partners can consult a divorce mediator or lawyer in order to draft a joint petition for divorce. This minimises the costs, gives the parties a greater

² Barendrecht, et al., 2009.

degree of influence over the outcome and reduces the matters that can give rise to disputes during the proceedings.

The Conflict Resolution Guide also contains a parenting plan module. The preparation of a parenting plan is mandatory in the Netherlands if the divorce involves minor children. This is to ensure that the interests of the children are safeguarded as effectively as possible. Where the parties have no children, this part can be skipped. Once the divorce and parenting plan has been completed the partners or ex-partners can finally apply to the court.

We acknowledge that the divorce and parenting plan is not suitable for every divorce case. The former partners must in any event be able to communicate with each other in a reasonable manner. If this is not possible, the litigant can make use of the services of a mediator (possibly through www.mediation.online.rvr.org) or lawyer. Once any problems have been ironed out, the partners or ex-partners can continue with the plan. If they are unable to resolve problems even with the assistance of a mediator or lawyer, the matter will have to be referred to and resolved by the courts.

2.3. Online mediation

Another important step is that a mediation online module has been designed as an addition to the Conflict Resolution Guide. This too is intended to promote the ability of parties to make agreements through e-mediation.

The module was developed on behalf of the Legal Aid Board in 2008 as an application for online mediation in divorce cases. The idea behind it is that online mediation can prevent the arguments and emotionally charged scenes that can occur in the case of face-to-face meetings. Online mediation helps to strengthen the position of the weaker party. Research by the Catholic University of Louvain shows that many women express themselves more easily if their partner or ex-

partner is not physically present in the same room. Online mediation helps to create more distance. It is therefore an excellent instrument for resolving communication problems in connection with divorce. Online the parties are able to give their answers or reflect on issues quietly and take their time to master their emotions properly. In addition, they themselves can decide when and how to participate in the discussion.

Online mediation starts with the completion of an extensive online questionnaire. The party's answers to the questionnaire enable the mediator to form a good impression of the dispute. Subsequently the mediator makes agreements with the parties about the procedure to be followed. Online mediation takes place completely in an online environment. Using online mediation poses no problem for anyone who is used to using the Internet and e-mail. No additional training is necessary.

To test and evaluate this application, the Legal Aid Board organised a pilot study. This pilot study was completed at the end of 2009.

In total 126 respondents, including 56 couples and 14 individuals, took part in the evaluation of the online mediation procedure. In general, the respondents were very satisfied with the procedure, its outcome and the mediator. 81% of the respondents stated that in the event of future disputes they would once again make use of online mediation.

When asked to what extent they were satisfied with the procedure, the majority of the respondents (92 respondents, 73%) stated that they were satisfied or very satisfied. Only 15 respondents (11.9%) stated that they were satisfied to only a small or very small degree with the online mediation procedure.

The respondents were generally very satisfied with the mediator. The great majority (98 respondents, 77.8%) were satisfied or very satisfied with the

mediator. Only a small number (11 respondents, 8.7%) were dissatisfied with the mediator. The average score for the personal approach by the mediator and the extent to which they could have a say in the procedure was also high (4.3 out of 5).

By the end of the online mediation procedure 96 of the 126 respondents (76.2%) had reached an agreement and 10 (7.9%) had reached a partial agreement. The remaining 20 (15.9%) did not reach an agreement. The majority of the respondents (73, 57.9%) were largely or very largely satisfied with the outcome of the online mediation procedure. It is striking that the respondents who did not consult a lawyer (3.4 out of 5) were more satisfied with the outcome than those who had consulted a lawyer (2.9 out of 5).

2.4 Aftercare webpage

Another addition in 2010 was a so-called aftercare webpage. This page provides information about everything people can encounter when the divorce becomes final. The emphasis is on communication between the parents: they may no longer be married parents as a result of the divorce, but they still are parents. Good communication will make it much easier for the child (fewer conflicts of loyalty towards the parents) and easier for the parents too. The webpage also provides information on maintenance (alimony) disputes, maintenance (alimony) indexation and various life events and their possible influence (moving house, new job, new relationship, sickness of the child, other extenuating circumstances, etc.).

2.5 Further developments that might improve the results of the scheme

Several extensions to the Conflict Resolution Guide are planned or underway. One particular example currently under development is a module for identifying objective criteria.

Objective criteria are a powerful negotiating tool. They offer parties to a dispute a way to resolve the dispute on the basis of external criteria, thereby allowing them to accept an outcome without the risk of losing face. Objective criteria also provide decision-makers with a powerful tool for comparing potential outcomes. Realistic criteria increase the likelihood that users accept a realistic outcome.

The module is currently being developed. This includes development of a method for gathering objective criteria, development of interface components and presentation methods for objective criteria, and empirical research into the effects that objective criteria have on users.

2.6. Initiatives for the clients of the Legal Aid Board

The Legal Aid Board too endorses the importance of the cultural change in its relationship with its own clients. First, this means that the message that the Board announces must be clearer. This is why the Board is rewriting all its publications in plain language. The section of the website at www.rvr.org that is intended for the general public is being redesigned and re-written. In due course this will indicate as clearly as possible for each legal area when counsel can and cannot be assigned to a client for the provision of more far-reaching legal assistance. Attention will also be given to cases in which this is dependent on a more specific assessment. Second, the Board will contact clients by telephone more often when preparing decisions. Citizens who object to a decision of the Board or have a complaint will be telephoned. The aim is to increase client satisfaction and reduce costs. In short, 'to reach a solution together where possible'.

The Board considers that a major factor in the success of its plans is the provision of clear information about decisions, both before and after they are taken. Staff of the Board are being trained not to immediately suggest the

possibility of lodging an objection. In other words, not to advise citizens that if they do not agree with the decision they can lodge an objection. Instead, the advice should be: 'If you have questions, please feel free to call us'. This is more inviting and ensures that citizens can also speak to people who will listen to them and then give them the correct answer without passing them on to someone else. Perhaps they will also look for the question behind the question formulated by the citizen. This increases the chance that citizens will regard the decisions of the Board as fair. The Board should aim not only to get its message across, but also to listen to what citizens have to say. Trying to be of service is what it is all about. And this applies to the Board as well.

3. Working to improve the self-sufficiency of citizens

Many of the forms of self-help will really succeed only if the government sets clear rules and explains them properly. A good many steps will have to be taken before this happens.

3.1. Simplification of legislation and regulations

To start with, it is important for our legislation and rules to be simplified. We must dispense with the notion that laws and rules result in better and more just decisions. If anything, the opposite is probably true: complex legislation results in many people being deprived of access to the law.³

When applied to the Dutch situation our plea for simpler legislation and regulations produces the following picture. Under Dutch administrative law relations between the individual and the State are governed by the General Administrative Law Act. This Act was originally drafted in order to provide more effective protection for the rights of citizens against decisions of the State or

³ See Richard Moorhead: 'Complexity does not secure the accuracy of justice, it secures the denial of justice for all but the few.'

government authorities. However, over time the legislation has become too complex. So many exceptions, reservations and special situations have been created and the whole field has become so 'juridified' that citizens can no longer grasp what it is about. In consequence, citizens need legal assistance, for example in the form of legal aid, in order to resolve their disputes. This is indeed characteristic of the Dutch civil law system. After all, whenever new legislation and regulations are drafted, everyone is consulted: lawyers, the Council for the Judiciary, the Netherlands Bar, the Legal Aid Board and many others. Furthermore, citizens too are becoming increasingly involved. This consensus culture results in complicated legislation since the contribution of these professionals brings about a proliferation of exemption, exceptions and special cases.

Let us examine an example recently given by the National Ombudsman. He mentioned the recent extension of the General Administrative Law Act to include a financial penalty for late decisions by government authorities. Although such legislation is in itself welcome, it has produced various perverse effects in practice. For example, administrative bodies have now often taken to making decisions almost 'blind'. Whether or not a decision is correct is evidently not of primary importance in such circumstances. What is paramount is that some form of decision is taken in time. Citizens too are hardly blameless. Some of them see an opportunity for earning money from this situation, for example by instituting many proceedings in the hope that they can bring proceedings for slow decision-making. The ombudsman is correct in saying that things can be done differently. The primary aim of administrative bodies should be to be of service to the public and to ensure that deadlines are met faithfully and meticulously. There is absolutely no need of a law for this purpose.

This increase in government intervention is also apparent in the field of criminal law. For example, the Dutch government authorities are increasingly focusing on prosecuting young people, whereas some form of educational intervention would

often be more logical. The prosecuting authorities fail to recognise that the mischief in which young people sometimes indulge is not necessarily an indicator of a criminal career, but simply part and parcel of the process of growing up.

An increasing volume of more complex legislation inevitably puts greater pressure on the courts and the legal aid system and increases the need for them. The Legal Aid Board has naturally considered how this trend can be reversed. It is convinced that against a complex social background savings cuts can be made successfully in legal aid only if the entire chain is taken into account. In the Board's opinion, the approach currently adopted by the authorities still places too much emphasis on cuts in legal aid as an isolated part of the legal system. Too little attention is still paid to the influence of (complex) legislation and regulations on legal aid. If the self-sufficiency of litigants is to be promoted effectively, it is essential that laws, rules and procedures be simplified. To this extent the Netherlands is no different from other countries.

Fortunately, there is a growing realisation in Dutch government circles as well that legislation and regulations have a major effect on the use of legal aid and the administration of justice. The Board welcomes the fact that the government has decided to assess new legislation and regulations more critically in the future and to apply a yardstick. The government believes that in this way only legislation that is 'really necessary and proportionate and imposes the least possible red tape' will be introduced. This yardstick is known as the Integral Assessment Framework for Policy and Legislation. Whether policy and legislation are really necessary is determined by reference to seven basic questions:

1. What is the background?
2. Who are involved?
3. What is the problem?
4. What is the aim?
5. What justifies government intervention?

6. What is the best instrument?
7. What are the consequences for citizens, the private sector, the public sector and the environment?

The government considers that the introduction of this system is making an important contribution to 'a more efficient, effective and transparent administrative and political decision-making process'.⁴

3.2. *A cultural change in the government sector*

Much can also be achieved in relations between the individual and the State. This is why we support the notion that it is necessary to bring about a cultural change in the public sector. The relationship between the individual and the State is inherently unequal. Citizens are to a large extent dependent on the State. If Harrods' coats are not to your liking, you're free to go to a different department store. But this is not possible with the State. The State has all the knowledge and plays a decisive role. This is why it is so important that government authorities should stress the public service ethos and adopt a transparent and fair approach.⁵

Being of service is mainly a question of being aware of the advantage one possesses in terms of knowledge. A person who applies for benefits because he has just been made redundant will hopefully experience this only once. But if you deal with benefit applications on a daily basis, it will be child's play for you. This entails the risk that you can no longer put yourself in the place of the applicant and that you provide him with too little information and do not check sufficiently whether he understands what you are saying. As a result, the distance between

⁴ House of Representatives, 2010–2011 session, 29 515, no. 330

⁵ Cf. annotation of Professor L.J.A. Damen, *Ars Aequi* april 2011 p. 308: 'Concept of government that aims to be of service: In a democracy where the rule of law applies, the administration exists for the citizen and not vice versa. It is therefore about doing justice to the citizen, in other words ensuring that he receives as far as possible that to which he is entitled, and that he is unnecessarily inconvenienced as little as possible. Delivering this right occurs 'sine ira et studio', i.e. without bias'.

you and the public becomes ever greater and citizens oppose ever more decisions of the authorities. Here there is a role for the authorities to adopt a more proactive approach and thus limit the number of objection procedures.

The National Ombudsman too has used similar terms to describe a defect in the relationship between the individual and the State. In his annual report for 2010 he notes that citizens and the State are increasingly talking at cross purposes and failing to accept the other as they are. According to the Ombudsman, this is partly due to the different focus. Government authorities tend to focus on cash flows and rules, where as citizens wish to be accorded proper treatment. On the basis of the complaints received in 2010 the Ombudsman concludes that the gap between the individual and the State is widening. In 2010 the Ombudsman received over 30,000 telephone calls and 14,000 complaints about government bodies. This was 14% higher than in 2009.⁶

Fortunately, there is also evidence of promising developments in the Netherlands that aim to reduce the gap between the individual and the State.

3.2.1. Pioneer project involving the use of mediation skills by administrative bodies

Since 2007 experiments have been conducted in the Netherlands with the use of mediation skills in the event of disputes or potential disputes between the individual and the State. The idea is that this approach should do more to meet the expectations of citizens. For many years the formal, legal and mainly written manner in which the authorities dealt with application and objection procedures met with great disapproval. Citizens expect close personal contact, intelligible communication and the correct and prompt handling of questions and problems. For many government organisations this necessitates a different mode of

⁶ This increase was partly attributable to an intense public campaign mounted by the National Ombudsman to reach vulnerable people in society who are most dependent on the state.

operation. In the case of an informal approach the official contacts the citizen concerned personally (by telephone) and discusses the best approach to his application, opinion, complaint or objection. In doing so the official applies mediation skills, including communication skills (such as active listening, summarising and questioning), and adopts a solution-orientated approach.

An evaluation report on this experiment was published in October 2010.⁷ Of the 22 pioneer projects 15 dealt with the objection stage and 7 with the primary stage. In total, 920 cases were monitored in full in the objection stage and 165 cases in the primary stage. The report includes both an analysis of the time allocation, costs, lead times and the nature and extent of the solutions, as well as the views of the citizens and officials concerned on how the cases had been disposed of. At the start and conclusion of the projects there was also an examination of the characteristics of the projects (such as the aim, design and vision of the organisation concerned) and the attitude of the officials concerned and their experience of the work. The main conclusions are given below.

In 50-60% of cases, on average, citizens opt for an informal approach to their objection and retract their notice of objection in consequence. In such cases the standard procedures are no longer followed. In the primary process citizens opt for an informal approach in 70% of the cases on average.

Citizens rate an informal approach to their objection on average with a figure of 7.2 out of 10 and also indicate that their confidence in the authorities has increased. This figure is in stark contrast to the national rating by citizens of the normal handling of objection proceedings (4.8 on average) and produces a 40% increase in the satisfaction of citizens.

⁷ Presentation of pioneer project on the application of mediation skills; letter of 8 October 2010, House of Representatives, 2010–2011 session, 29 362, no. 185.

Where an objection is dealt with informally, the overall lead time of the proceedings is almost 40% less than the maximum statutory period and on average approximately 20% less than ordinary proceedings.

The average rating by officials of the informal handling of objections is 7.8 out of 10. Polls conducted among officials who have experience of an informal method of dealing with objections shows that there is broad support for continuation of this approach. Where mediation skills are deployed the government organisations concerned achieved an efficiency gain of approximately 26% in terms of the lead time in comparison with the standard procedure.

The survey concludes that the deployment of mediation skills contributes to the 'de-juridification' and de-escalation of disputes between the individual and the State. It not only increases the efficiency and effectiveness of government but also, according to the researchers, is essential for proper administration. Full application of this approach would enable government to achieve structural efficiency gains of approximately 55 million euros per year, which takes into account other possible savings.⁸

If the number of complaints or objections in respect of which mediation skills are applied is compared with the total number of complaints and objections, it is apparent that these skills are still applied only on a limited scale. Mediation skills are used for less than 10% of the total number of objections dealt with nationwide.

The evaluation report also looks to the future and formulates the success factors. This procedure requires a considerable effort on the part of the organisations and staff concerned. It involves a serious organisational change which influences the internal work processes. This is why national coordination and support is

⁸ An example is the costs that would otherwise be incurred in arranging external committees to hear the case or follow-up proceedings.

important in order both to successfully roll out initiatives nationally and to achieve careful application of the skills.

The provision of coordination and support are desirable in order:

- (a) to encourage and motivate government organisations to adopt informal procedures;
- (b) to provide a knowledge platform (exchange of best practices);
- (c) to make it possible to learn with the help of various instruments;
- (d) to promote knowledge development, for example with the help of research and publications;
- (e) to monitor the effects and ensure the quality of an informal approach (including effects in terms of legal certainty and the proper administration of justice).

Further monitoring and research into the use and effects of the informal approach would be desirable in order to promote the development and sharing of knowledge and to further strengthen the professional skills of officials.

3.2.2. Proactive conflict resolution project

The Ministry of Justice too has developed initiatives to allow conflicts to be resolved differently within the justice field.⁹ The activities of the Ministry of Justice, specifically in the form of a proactive conflict dispute project (PAGO), have been inspired by the project discussed above. The idea behind PAGO is that in the justice field too administrative bodies can use mediation skills to prevent disputes with citizens or resolve disputes at an earlier stage. As some litigants involved in disputes with administrative bodies are dependent on legal aid, a reduction in the number of objection and appeal proceedings can also help to reduce the claims on legal aid funds.

⁹ House of Representatives, 2008-2009 session, 31 700 VI, no. 88

The State Secretary for Justice appointed a PAGO 'ambassador' in early 2009 to establish contact with some of the Ministry's public service organisations and encourage them to institute activities designed to achieve a proactive manner of dispute resolution. In addition, the ambassador was given the task of encouraging parties outside the justice field who make great demands on legal aid funds to engage in a proactive manner of dispute resolution.

Like the pioneer project discussed above, the PAGO project is based on the assumption that not all disputes between individuals (or businesses) and the State that result in objection and appeal proceedings need go this far. As we are dealing with various government bodies and hence with various types of cases, account must be taken of the conditions on which the success or otherwise of PAGO will depend. The Scientific Research and Documentation Centre (WODC) of the Ministry of Justice has identified various factors that may be of influence:

1. The cause of the dispute. Cases in which a dispute arises because a decision is unclear may be easier to resolve than those in which there is disagreement about a decision.
2. What could also make a difference is whether the government authority immediately contacts the citizen or contacts his legal representative. Often a lawyer is better informed and hence better placed than an individual to refute the arguments of the authority. There is also a chance that a lawyer may wish to have the information on paper as evidence for his client. In that case, the lawyer may be less inclined to agree to resolve the matter by telephone.
3. For a proactive manner of dispute resolution it would also seem important for the citizen and the official to have a good oral command of the same language.
4. Moreover, in determining the success of PAGO account must be taken of the importance of the case. The greater the importance attached to a

decision (e.g. in the case of a residence permit to be granted by the Immigration and Naturalisation Service (IND) or in the case of social assistance benefits to be granted by the municipality), people will be willing to continue proceedings for longer in order to achieve a positive result.

5. What may also be of importance is whether the government authority and the citizen are prepared to negotiate and have scope for negotiation. Are both parties prepared to make concessions and does the official have the authority to compromise?

This project has helped to ensure that many authorities within the justice field have worked to reduce the number of legal proceedings, for example through the use of mediation techniques.

3.3. Simple and transparent rules and standards

The success of self-help is also highly dependent on the question of whether the standards to be observed and applied by the citizen are simple and transparent. In any event some form of handhold and structure is necessary if citizens are to be able to resolve an issue on their own.

Often, unfortunately, no such handhold or structure is provided for citizens. They are confronted with complex legislation and regulations, difficult implementation practices and complicated case law. Consequently, they can hardly be asked to take responsibility for finding a solution to the problems concerned. Moreover, legal uncertainty is also itself a source of conflict. What citizens do need is a clear and concrete framework of rules that is easily accessible. This could help them to avoid problems, but also be used by them as a guide in solving a conflict. However, it is essential for the correctness of the rules invoked by the citizen to be assured. This means that it must be possible to consult the rules on a website whose objectivity is beyond doubt.

The use of more self-help to resolve conflicts requires a link between the legislation and regulation and their implementation. This is the aim of the efforts made by the Legal Aid Board in relation to the Dutch parliament. An example is our efforts in connection with maintenance (alimony) payments. Many court proceedings could be prevented if the maintenance scheme rules were simplified and applied in a uniform manner. At present the system of rules for maintenance is much too complicated and insufficiently reflects the experiences of those concerned. The results of maintenance calculations are often felt to be unjust and they serve as a source of conflict. And this in turn adversely affects the willingness of partners to pay maintenance.

Against this background the parties themselves often go in search of rules and methods that are most suitable for them. In cases that eventually end up before the courts, these agreements are then found to be in conflict with the framework of rules contained in the legislation and regulations. The Legal Aid Board therefore advocates steps to ensure that the rules and criteria that can be applied by citizens in assessing the justice/value of their claims and resolving disputes are transparent and accessible.

4. Conclusion:

The Legal Aid Board firmly believes that as an addition to the current system of legal aid citizens should be given greater responsibility for resolving their own (legal) problems. In recent years the Board has therefore endeavoured to provide citizens with the means to actually assume this responsibility. Good examples of this are the introduction of the internet application known as the Conflict Resolution Guide (*Rechtwijzer*) and the Legal Services Counter (*Juridisch Loket*).

Unfortunately, the provision of the Conflict Resolution Guide as a form of self-help is not of itself sufficient. If the concept of self-help in the legal field is to

achieve real success, other conditions (described above) must be fulfilled. Fortunately, there is evidence of positive developments in this respect. For example, government authorities are putting increasing emphasis on the public service ethos. This will clearly make it possible for citizens to accept greater responsibility for resolving their own problems. But even this certainly does not go far enough. The efforts of the Dutch government are lagging behind, particularly in respect of the need for simpler and more transparent rules and standards. This is why the Legal Aid Board will continue to urge government to take steps in this direction.

The Board realises that self-help is not suitable for all citizens. For many citizens who find themselves in a vulnerable position self-help is not the solution. In such cases professionals must therefore be available to assist the citizens assume responsibility for handling their own problems. In the Dutch situation, the Legal Services Counter or the Citizens Advice Bureaus are well-equipped to assist these citizens and, if necessary, to work with them in using the Conflict Resolution Guide.

Naturally, self-help is not always the solution. If citizens are unable to resolve their problems themselves on the basis of advice or through an alternative form of dispute resolution, they must ultimately be given effective access to the courts. This access to the courts is a necessary condition for the success of the self-help concept. Ultimately, it is precisely this 'shadow of the law and the courts' that ensures that self-help solutions are possible and acceptable for the parties. More self-help and sufficient access to the courts therefore serve the same interest: a citizen who can get justice in a simple and straightforward manner.

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