

## **National Report - Belgium**

Steven Gibens and Bernard Hubeau (University of Antwerp)

### Introduction

In previous national reports on legal aid in Belgium, the main focus was on legal assistance provided by private lawyers. In this latest report, closer attention is paid to legal aid provisions by social welfare organizations, though private practitioners are also considered. The relationship between the legal profession and the government has been troubled lately following budget cuts in consequence of the financial crisis. Private lawyers, for their part, have been pressing for a more generous legal aid budget, arguing that their remuneration is quite low compared to that of their counterparts in neighbouring countries.

#### 1. Social Legal aid

##### 1.1. What is it all about?

The notion of “social legal aid” refers to a group of legal services providers who act as experts in dealing with problematic situations beyond the scope of traditional legal aid (Van Houtte et al., 1996).

The essential characteristics of social legal aid may be summarized as follows: concerned with problematic legal situations confronting the most vulnerable groups in society; services provided free or almost free (no market-driven pricing); a client-centred approach; frontline socio-legal assistance; provided mostly by private initiatives; often provided as part of a broader, more encompassing service; primary focus on individual problems and curative action, but also due attention for collective problems, including preventive action, and sometimes organized by the public sector; may be open to all or restricted to specific target groups.

Social legal aid is not synonymous frontline legal aid. The Act of 23 November 1998 on legal aid defines frontline legal aid provided by private lawyers as legal assistance through practical information, basic legal counsel or referral to a specialized body (Article 508/1, 1° Code of Civil Procedure). It is organized by the Commissions for Legal Aid (see *infra*).

The Legal Aid Act of 1998 reorganizes the system of legal assistance along three parallel sectors: first-line legal aid, second-line legal aid, and social legal aid. Cooperation between these sectors is to be enhanced for the benefit of service users.

## 1.2. Evolutions in first-line legal aid and social legal aid (2013-2015)

Before the sixth state reform of 2014, first-line legal aid used to be a federal competence, while social legal aid in specific legal matters was provided by legal assistance providers organized and funded by the Regions and Communities. In other words, social legal aid had a threefold legal source, which could result in coordination problems. Following the 2014 devolutionary state reform, it remains to be seen how the Regions or Communities will regulate before any assessment can be made of how effectively they are coping with their newly acquired competences.

As mentioned in our previous national report, a study was conducted in 2011 by the University of Antwerp (Faculty of Law) and a number of Flemish university colleges that offer a Bachelor in Social Work. It dealt with social legal aid delivered by consumer organizations, Municipal Centres for Social Welfare (and their legal aid services), Centres for General Welfare, the ombudsman, trade unions, health services, advice centres for migrants, tenant organizations, “houses of justice”, law centres, advice centres for youth and students, and children’s rights organizations.

Since this study, a number of developments have unfolded in the provision of social legal aid in Flanders. These include:

° The continued professionalization of social legal aid. This finds expression in, among other things, the merger of Centres for General Welfare (CAW) into a single centre per province. The Social Renting Offices (SVK), for their part, have seen an increase in the number of leases in their portfolios. On the other hand, in consequence of the financial crisis, funding has been cut significantly (though not drastically), especially at municipal and city level.

° The Municipal Centres for Social Welfare (OCMW) find themselves in a transitional situation. The new government is preparing for their abolition as autonomous institutions. Over a period of four years, they are being integrated into the local authority apparatus, raising the question of whether their role in the provision of legal aid will be affected.

° The number of poor/vulnerable people appears to have increased since the financial crisis and its sequels. Organizations such as the Poverty Network (Netwerk Armoede) and the Service for the Fight against Poverty, Insecurity and Social Exclusion (Steunpunt tot Bestrijding van Armoede, Bestaansonzekerheid en sociale uitsluiting, ? have seen an increase in the number of questions and complaints, and they say they are now working more emphatically towards a “just” society, e.g. through the prevention of underprotection and non-take-up of rights (Eeman & Van Regenmortel, 2013). Some organizations have advocated greater clarity of legal communications and terminology (cf. Droits Quotidiens and their training programme for social workers); the so-called “forms brigade” (Dutch *formulierenbrigade*), which was established as part of a community-building effort, is devoted to ensuring that people take up their rights and financial entitlements). In the aftermath of the economic crisis, some organizations have specialized in particular types of problems or in servicing specific target groups, such as socially vulnerable or homeless people, justice system clients, elderly persons and youth, or, more generally, people facing

financial hardship. More organizations are now dealing with legal and other issues, but the approach has become more specialized and geared to users' needs and societal evolutions (e.g. rising debt). In the case of some organizations, legal aid is provided as part of a more encompassing service.

° The number of ombudsmen has stabilized and may be expected to decrease, as new legislation introduces a (centralized) ombudsman service for consumer affairs. The purpose is to merge the present telecommunications, postal and rail ombudsman services into a single service.

### 1.3. The special role of the “Houses of Justice”

The “Houses of Justice” serve a special purpose.

Their mission is essentially to provide “logistical” support to the Commissions for Legal Aid. As mentioned in a previous national report, the creation of Houses of Justice was intended to enhance the integration of existing judicial institutions into a socially and individually adequate service: their objective is to promote a more effective, accessible and humane justice system.

The variety of missions is an obstacle towards the efficient realization of the overriding objective of giving justice a more humane face through more effective prevention and first-line legal assistance. Moreover, citizens still face a huge barrier to obtaining information. One of the purposes of the Houses of Justices, as part of their first-line service, is to provide information on everyday legal matters. They also provide second-line services, including mediation in criminal cases, victim support, probation reporting and family dispute reporting. In addition to their informational role, many houses of justices collaborate with the commissions for legal aid. People requiring more specific legal counsel or information are often referred to a house of justice, where consultations sessions are provided by private lawyers.

Since the reorganization of 2005, the houses of justices have cut back on their first-line operations. Their main focus is now on their primary tasks as specified by law, so that they now essentially provide a second-line service. Everyday legal issues are no longer considered part of their core business.

Fig. 1 shows quite clearly the overall decline in first-line information and referrals since 2005. Remarkably, more first-line cases are dealt with in Belgium's southern region. An analysis of the annual reports of the houses of justice suggests that this is due to the fact that, in the south of the country, many houses of justice felt a need to continue to provide first-line services, while in Flanders many abolished such services as they no longer considered them to belong to their core business.

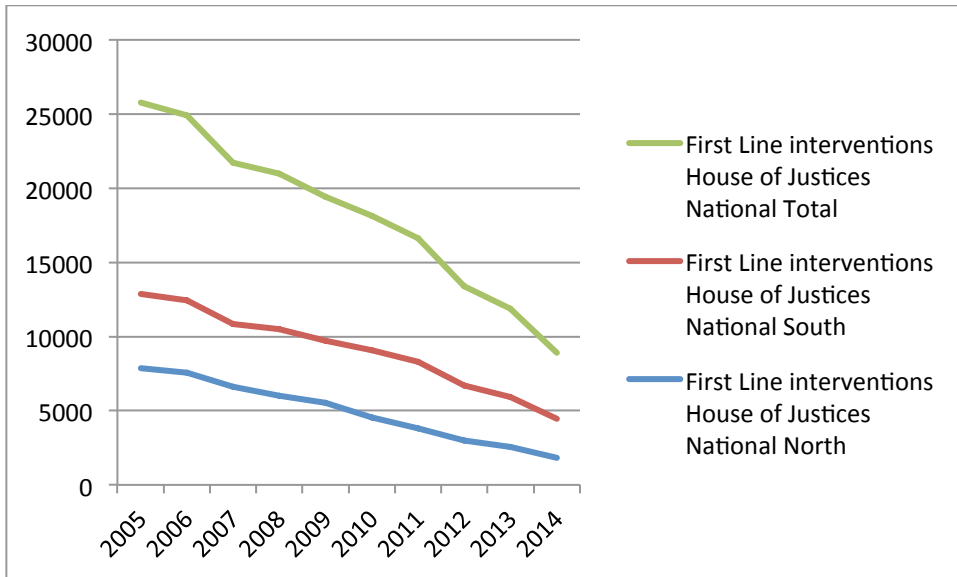


Fig. 1 Source: Houses of Justice and UA

While the houses of justice have reduced their first-line services, figures do suggest they are easily accessible. Clients can reach them by telephone or in person during office hours. Hence the houses of justice succeed in fulfilling their role as initial contact point (see Fig. 2).

First-Line Interventions by Houses of Justice, National 2005-2014: contacts

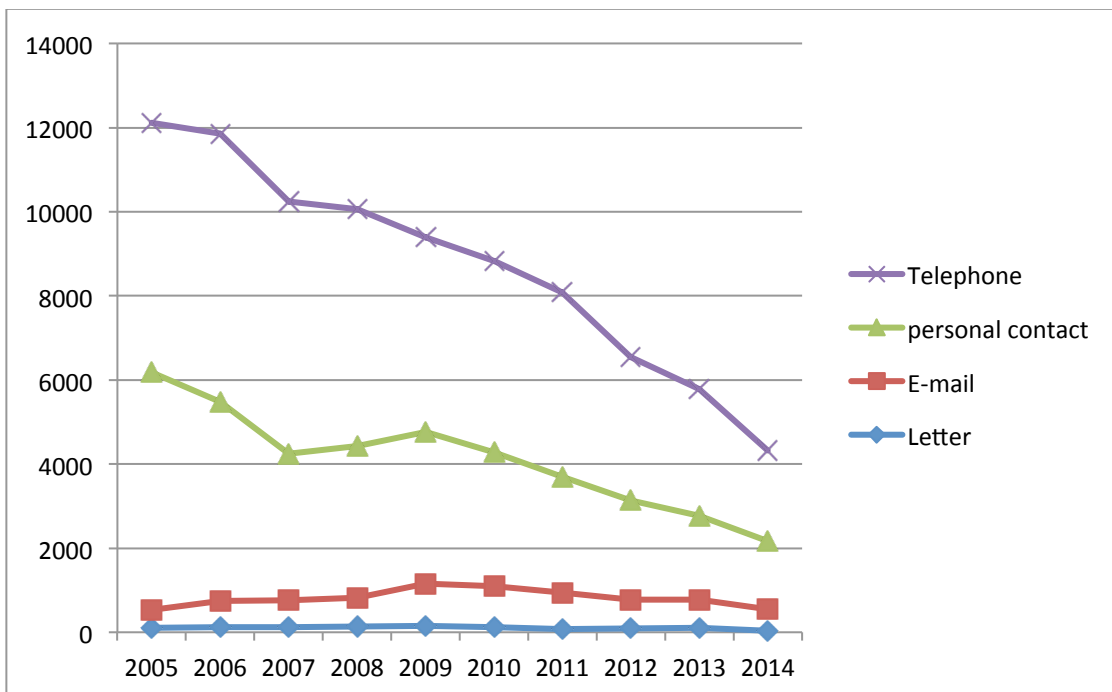


Fig. 2 Source: House of justice and UA

Prior to 2007, most of the information provided related to civil law and family law. Houses of justices also informed people on criminal law matters and on second-line services (Table 1), and on diverse other areas of the law, including judicial law, juvenile law, immigration law and public law (see Table 1). However, since 2007, they have restricted their

informational role to criminal law, family law (as part of civil law) and para-legal services. All other legal matters are now considered to be beyond their scope of competence and, in such cases, clients are referred to legal aid services or private lawyers. Such referrals were less frequent when houses of justice performed a broader role in providing legal information (Fig. 3)

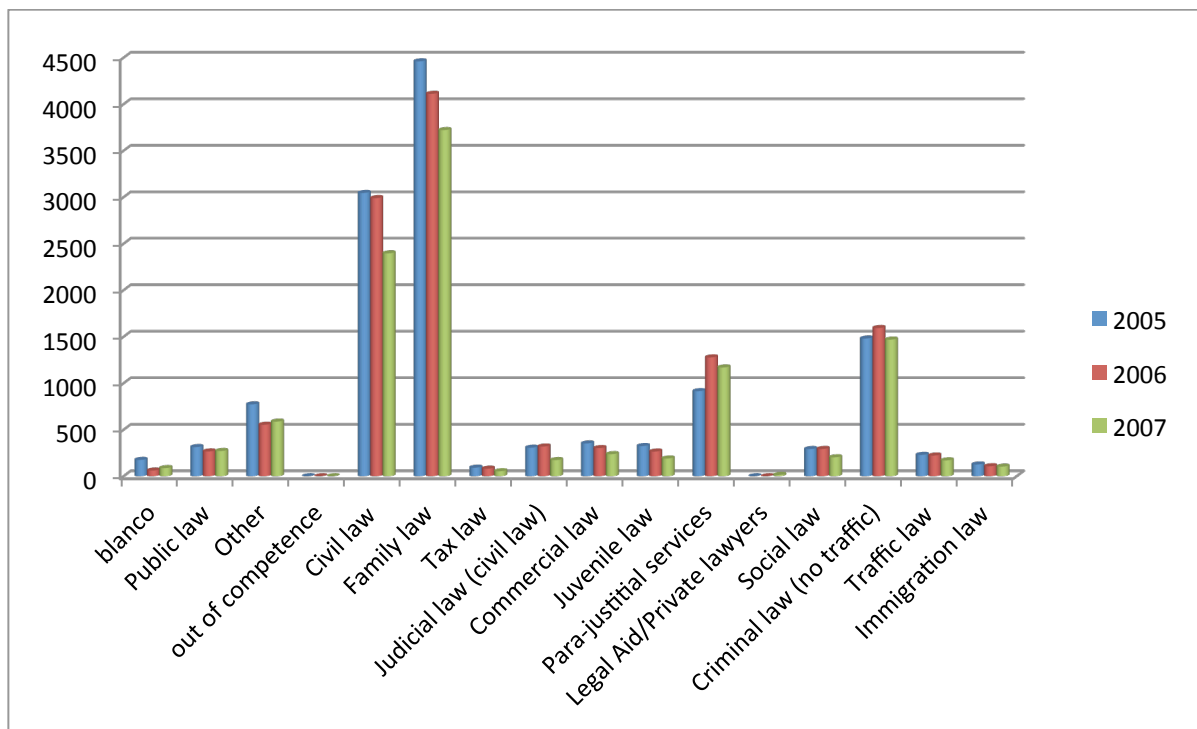


Table 1 source Houses of justice and UA

First-line interventions by Houses of Justice, national 2008-2014

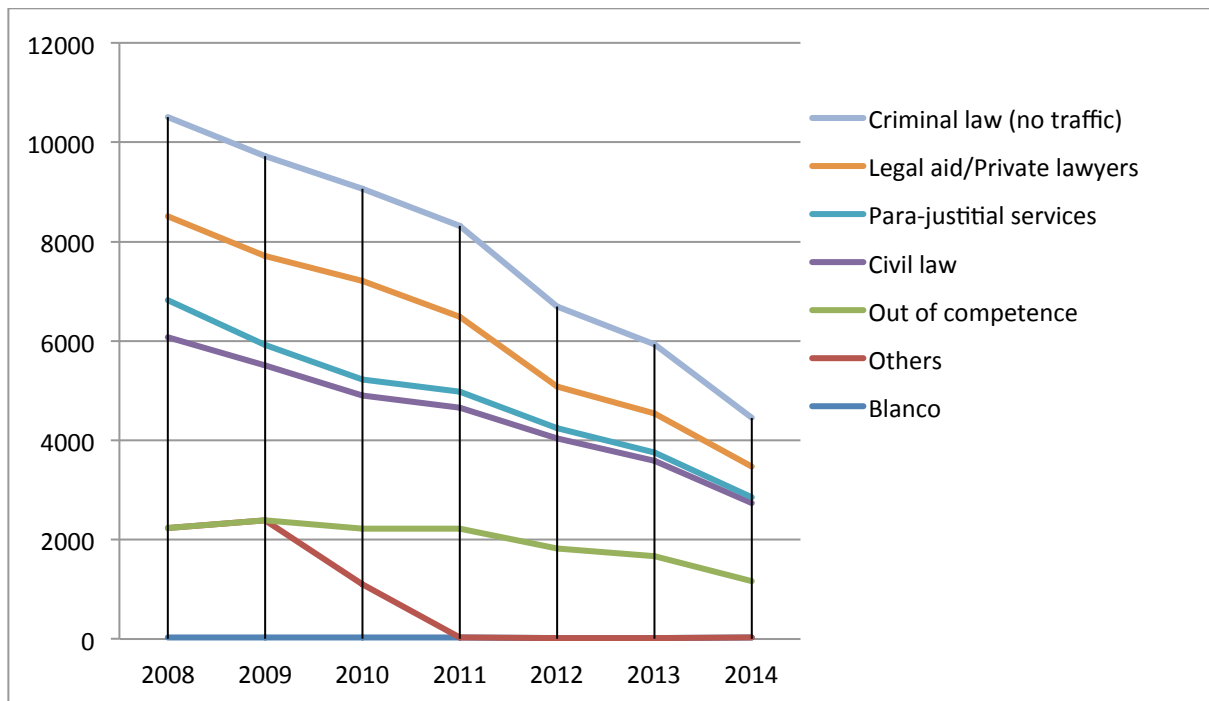


Fig. 3. Source: Houses of justice and UA

The Communities are presently defining the new role of the Houses of Justice, a process that is likely to take a few years. In the meantime, the Communities must adhere to the strategies devised by the former federal authorities.

Generally speaking, justice issues continue to be a federal matter, though competence in some areas has been transferred to the Communities. A cooperation agreement between the different levels was reached on 17 December 2013 (<http://www.ejustice.just.fgov.be/mopdf/2014:06/17.2pdf>).

On 14 January 2014, an inter-ministerial conference was set up for the Houses of Justice. It provides for a general (i.e. national) and a local (i.e. per judicial area) consultation on matters within the remit of the Houses of Justice.

#### 1.4. The impact of the 6th State Reform

With the 6<sup>th</sup> State Reform of 2014, the regulation and organization of the Houses of Justice and first-line legal aid was transferred to the communities.

On 16 September 2013, the Flemish Administration published a Green Paper in preparation of the 6th State Reform. Insofar as judicial policy was concerned, the following areas had already been earmarked for transfer of power prior to the debate in the Flemish parliament: certain aspects of prosecution policy, juvenile justice, the houses of justice and first-line legal assistance.

The Green Paper identified the following options for competence transfer in respect of the Houses of Justice: the full adoption of the federal policy views and tools; stronger focus on optimisation of cooperation between the Houses of Justice, the magistracy and legal aid and services providers; the optimization of the roles of respectively the Houses of Justice and

legal assistance and services providers; “legal care” as a separate area of competence within the Flemish administration.

The Green Paper outlines the following two options in respect of the (re)organization of the Commissions for Legal Aid: (a) continuation of the existing approach or (b) the optimization of the fulfilment of the assignments on the part of the Commissions by means of either an integration into existing legal aid initiatives or an organizational overhaul.

Article 5, § 1, II, 8° and III of the Special Law on the reform of the institutions transfers to the communities competence in matters relating to frontline assistance, as well as regulatory power in respect of the organization, the functioning and the role of the Houses of Justice and of the competent service that ensures the organization of and follow-up on ankle monitoring. The associated financial means and existing subsidies are also transferred to the communities. The federal authorities do however retain the competence to determine the tasks to be carried out by the Houses of Justice or any other service of the communities as part of the judicial procedure or the implementation of judicial decisions, as well as the procedure that applies to courts of law, or to the implementation of judicial decisions or the enforcement of sentences.

The federal authorities and communities must however reach agreement over cooperation in relation to the execution of the tasks entrusted to the Houses of Justice by the federal authorities. Any such agreement must cover all aspects of the cooperation in terms of quality, capacity and budgetary implications as well as, *inter alia*, the organization of the deliberative structures between the representatives of the competent authorities and the Houses of Justice (Vanneste, 2014, 442-443). Some authors observe that problems may arise with regard to the implementation of these powers, as it concerns a combination of powers belonging to different levels of competence (Vandenbruwaene, 2014, 310-313).

The sixth state reform also transfers to the communities responsibility for the commissions for Legal Aid. These commissions help resolve citizens’ basic legal problems through practical information, tentative legal advice or referral to a specialized institution or organization. This free first-line assistance, which is provided by lawyers, is to be perpetuated and ways are to be explored to lower the threshold to accessing such services. Available options in this respect include a close and unequivocal cooperation between first-line social workers, a stronger positioning of the Commissions for Legal Aid, an effective collaboration and alignment with second-line legal assistance, and the design of innovative approaches to providing citizens with legal services (e.g. by means of digital channels). To this end, a consultation will take place of all parties concerned: the Flemish Bar Association, the Federal Public Service for Justice, representatives of first-line social services, as well as representatives of law centres and tenants associations. (Cf. the 2014-2019 Policy Paper on Wellbeing, Public Health and the Family submitted by Mr Jo Vandeurzen, Flemish Minister of Wellbeing, Public Health and the Family, Parliamentary Documents, Flemish Parliament, 2014-15, n° 125/1, 50-51).

## 1.5. Contributions to a framework for a “socially responsible legal aid”

Recent contributions on legal aid generally and social legal aid in particular commonly advocate a more holistic and so-called “socially responsible” approach to providing such assistance. There is a role to be played by all operators in the field of legal aid, for, considering that fundamental rights are at stake, legal aid is part of the public sphere: lawyers and other actors, like institutions providing social legal aid, must cooperate with the social sector in general (Gibens & Hubeau, 2013; Hubeau, 2015).

Legal aid must meet the five “conditions of adequacy”, in relation to accessibility, utility, affordability, simplicity, and availability (Hubeau & Parmentier, 1990). This is the framework put forward in a book on “Legal Aid in the Low Countries”. (Hubeau & Terlouw, 2014)

As a consequence we observe in the field evolutions that tend towards a “holistic”, or an “integral” or “integrated” approach to legal aid and socio-legal services. This is apparent in the functioning of certain newly formed as well as existing organizations, Zo? Nederlands liep niet, maar was niet zeker wat jullie bedoelen and it finds expression in a proactive socio-legal practice, vis-a-vis the public as well as social workers zo? (Droits Quotidiens; community building (formulierenbrigade; see for example a project by the General Welfare Centre of East Brabant where social workers and lawyers are working together through outreach in providing legal information and advice to vulnerable people).

We observe in policy papers that legal aid is now seen as a dimension of a justice system that has legitimacy, with the aspiration to promote democratic values and fundamental human rights, and equality for all (Steunpunt 2014). The right to legal assistance is considered a social human right

## 2. E-justice

### 2.1. What’s it all about?

Online assistance has become a hot issue as the digital age impacts noticeably on the social and legal sectors. Many organizations now provide online services. In the social sector, online assistance can take different shapes and forms, and it may be known as eHealth, digital care, Welzijn (welfare) 2.0, etc.

Bocklandt et al. describe online assistance in care and wellbeing as follows: *‘Online assistance in relation to wellbeing and health encompasses all interventions\* involving information and communication technology (ICT) with a view to maintaining or enhancing wellbeing and health in the broad sense.’* The principal characteristics of online assistance in the fields of wellbeing and health are: (1) use of ICT; (2) the option of anonymity; (3) channel reduction and de-contextualisation; (4) a supply that is unrestricted in space and, as the case may be, time; (5) recognition of the fact that directing the aid process is a shared responsibility between the client and the provider; (6) the enhancement of cooperation between geographically dispersed organizations; (7) greater transparency (Bocklandt 2014).



It would be too simple to replace the terms wellbeing and health with socio-legal assistance. The welfare sector provides primarily psychosocial assistance, with the possibility of some material, and sometimes also legal, assistance.

Legal and judicial assistance are moreover part and parcel of the Justice system. but this may covers many different things. The European Commission defines the purpose of e-Justice as follows: *'to improve citizens' access to justice and to make legal action more effective, the latter being understood as any type of activity involving the resolution of a dispute or the punishment of criminal behaviour (Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee Towards a European e-Justice Strategy', 30 May 2008 Com(2008) 329 final (3). The European Parliament, in its resolution of 18 December 2008 containing recommendations to the Commission, asserts that 'e-Justice has a broad definition including, in general, the use of electronic technologies in the field of justice' (OJ C 75, 31 March 2009). The Council, in its Multi-annual European e-Justice action plan 2009-2013, refers to 'the use of information and communication technologies (ICT) in the field of justice'.*

Hence, the term e-Justice refers not to a different kind of Justice, an alternative judicial power, or divergent judicial procedures, but to ordinary Justice involving the use of ICT tools in the organization and performance of task by the regular judicial bodies (Inchausti 2012). These are the characteristics of e-Justice : (1) internet services for the purpose of public information (or even data exchange between citizens and judicial organizations); (2) internet services that exchange data between organizations (business-to-business); (3) intranet services to facilitate procedures within a given organization (e.g. workflow systems), (4) services that provide 'juridical communication' (e.g. protected email, cf. digital signatures), (5) services for digital audio and video recording (e.g. systems for relaying court hearings); and (6) video communication services (telesurveillance and long-distance interrogation) (Vassileva 2007).

In the literature, one finds that e-Justice is commonly associated with the internal organizational aspects of Justice and its online window onto the outside world. The information that is provided to the public tends to deal with the judicial actors, the composition and organization of courts of law, court access (opening hours, information about procedures and updates on procedural state of affairs) and the exchange of legal documents, both internally and externally, e.g. forwarding by e-mail of lawyers' statements. And, finally, it encompasses the use of digital technology in courtrooms (videoconferencing, etc.). Hence e-Justice has an internal and an external dimension. The latter is often restricted to the provision of information and advice, not least about its own functioning.

Therefore, to approach socio-legal aid services merely as a part of e-Justice would appear not to be a viable option, even though, according to the definition coined by the European Commission, it contributes to enhancing public access to the justice system. Socio-legal aid services go beyond directing users to the Justice system. It stretches out across different societal areas, ranging from labour and employment to consumer affairs, and from immigration and the family to policing and enforcement. The services provided also encompass a variety of methodologies, including the provision of information and advice, the representation of interests, personal counselling, and mediation. Online social legal aid services, then, can be said to provide a service in between welfare work and e-Justice.

Online socio-legal aid services may be described as services that rely on information and communication technology (ICT) to provide virtual socio-legal assistance in resolving everyday questions and issues. Hence its basic characteristics are: (1) use of ICT; (2) working towards the prevention or out-of-court resolution of (potential) conflicts; (3) dealing with everyday socio-legal issues; (4) unrestricted in space and time; (5) aiming to provide effective and efficient access to Justice; and (6) ranging from simple online applications to more complex combinations and sophisticated processes.

## 2.2. Overview of online tools in social legal aid

First and foremost, there are the sites of the Federal government, which fit primarily into the aforementioned definition of e-Justice. For example, the portal site of the Federal government ([www.belgium.be/nl/justitie/](http://www.belgium.be/nl/justitie/)) provides general information about Justice. It is a non-interactive online application offering downloadable brochures and links to related sites, such as e-Cops, where users can report Internet crimes. In addition, there are the sites of the various authorities and public-law institutions that provide more or less extensive information about citizens' rights and obligations (e.g. in the field of social security law: Rijksdienst voor Arbeidsvoorziening ([www.rva.be](http://www.rva.be))). An interesting website hosted by the Flemish authorities ([www.rechtenverkenner.be/Pages/Home.aspx](http://www.rechtenverkenner.be/Pages/Home.aspx)) directs users to information on social benefits and allowances. Its purpose is to provide easy, quick and generally improved access to details about citizens' basic social rights, including from websites hosted by other services or institutions. It covers a wide range of areas, including law, labour, the environment, telephony, the family, transport, sport, energy, income, taxation, education and justice. The site endeavours to answer everyday questions by providing an online overview of social rights, allowances and other benefits provided by the federal, the Flemish regional and municipal authorities for vulnerable groups such as the elderly, the chronically ill, impaired persons and job-seekers. It also advises users on who to turn to with their social legal questions and issues. Hence, the website's role is primarily supportive, with limited scope for interaction.

In the sector of subsidized private aid, the so-called Centres for General Welfare Work (Centra voor Algemeen Welzijnswerk) host an interactive site ([www.caw.be/jouw-vraag-onze-eerste-zorg](http://www.caw.be/jouw-vraag-onze-eerste-zorg)) that focuses on questions about relationship issues, personal problems, and financial, administrative, legal or material matters, as well as on mediation in conflicts within the household, family or neighbourhood. However, the website does not offer specific online legal information. It merely provides a platform for contact by chat, telephone or email, and it also allows users to make online appointments to sort out their issues, including any socio-legal questions they may have in relation to debt and family matters.

In the field of out-of-court conflict resolution, there is the website of the ombudsman service ([www.ombudsman.be](http://www.ombudsman.be)). It provides referrals to the relevant ombudsmen and women in areas such as consumer affairs, finance, municipal affairs, health and wellbeing, youth and education, working careers and retirement, mobility, civil documentation, and housing and the environment. It also provides a step-by-step platform for filing complaints and, in this sense, functions as an interactive tool.

Some of the more specialized sites deal with more specific social legal issues. The Flemish tenants' platform (Vlaams Huudersplatform), for example, operates a site ([10](http://www.vob-</a></p></div><div data-bbox=)

[vzw.be/hb/tabid/63/default.aspx](http://vzw.be/hb/tabid/63/default.aspx)) that provides information about itself and about tenancy law. It also allows users to download documents such as texts of law and templates. It is a basic online application. Users who require more detailed information are referred to local tenants' associations, who provide face-to-face information and limited assistance to members during consulting hours.

The website of the Office of the Flemish Commissioner for Children's Rights ([www.kinderrechtencommissariaat.be](http://www.kinderrechtencommissariaat.be)) is devoted to detecting signals of abuse from children, youngsters and professionals. The office investigates complaints, offers mediation and advises policymakers with a view to protecting children's rights in Flanders. It deals with online complaints and engages actively on various social media.

The children's rights centre hosts a website ([www.kinderrechtswinkel.be](http://www.kinderrechtswinkel.be)) that is tailor-made for children and youngsters. It provides information on children's rights and allows users to engage in chat. As the website is up for an overhaul, it also invites user evaluation (meta online application).

There is also a website devoted to first-line debt assistance ([www.eerstehulpbijschulden.be](http://www.eerstehulpbijschulden.be)). It is operated by the Flemish Centre on Indebtedness (Vlaams Centrum Schuldenlast, VCS), a private organization that is subsidized by the Flemish Community. The site provides information about debt, debt assistance, and the rights and obligations of debtors and creditors. It offers referrals on the basis of questions received and answered. It also provides a link to an online budget planner ([www.budgetplanner.be/](http://www.budgetplanner.be/)), an application that allows users to meticulously input data on their income and spending behaviour and that, on this basis, formulates a brief advice.

Also noteworthy is a website run by the Federal Public Service for the Economy ([http://economie.fgov.be/nl/geschillen/Consumentengeschillen/#.U6\\_fm7HlyX8](http://economie.fgov.be/nl/geschillen/Consumentengeschillen/#.U6_fm7HlyX8)). It endeavours to offer quick and cheap solutions for both duped consumers and unpaid traders. The government provides an online application for mediation towards out-of-court settlement of such commercial disputes. The site also offers an online satisfaction test.

In the field of asylum and immigration, the site run by Kruispunt Migratie-integratie Vzw. ([www.kruispuntmi.be/thema/vreemdelingenrecht-internationaal-privaatrecht](http://www.kruispuntmi.be/thema/vreemdelingenrecht-internationaal-privaatrecht)) offers legal information, arranged by theme and according to level of detail. It also provides access to an online legal helpdesk and to a database of specific jurisprudence on migration and integration issues. The centre's activities are also advertised on Facebook.

As one can observe the online information on everyday legal issues in Flanders and in Belgium are available in a mere fragmented way in contrast to the site of Droits Quotidiens in the French speaking part of Belgium. It provides legal aid in an integrated manner to the public in general and to social workers as intermediators more specifically. A similar initiative in collaboration with Droits Quotidiens in Flanders is launched and is named *Helderrecht*. We will now discuss the case of Droits Quotidiens.

### 3.3. The case of Droits Quotidiens (DQ)

Approximately 17.5% of French-speaking Belgians, some 600,000 individuals, live below the poverty line. As a group, these individuals are prone to legal problems in relation to housing, familial issues and residency. DQ is devoted to providing easier access to the law for the most excluded population groups in the francophone part of Belgium. The majority of these people perceive the law to be beyond their reach. Calling on lawyers is often expensive and

commonly regarded as stigmatizing. Other organizations providing legal assistance may be free, but often the services provided are too specific to be of use to these groups.

DQ is a not-for-profit organization staffed by six remunerated legal experts and relying on a hundred or so external volunteers who are committed to working on a daily basis towards a simplification of the law. DQ combines qualitative legal aid with client independence and autonomy, so that people are able to act personally on the basis of the information provided on their rights and obligations. It is an independent organization committed to helping the most vulnerable users of the law and to informing people about their rights in the clearest possible terms. For more than fifteen years, DQ has been providing up-to-date online information pertaining to the following areas of the law: family, housing, youth, social security, debt, immigration, criminality and taxation.

DQ has set itself the goal of providing relevant and clearly worded legal information (plain language) to anyone who may require it. In so doing, it strives to prevent the escalation of problems and to inform people timely, with a view to facilitating out-of-court settlement. DQ takes an integral approach. It provides a variety of services to citizens and to professional intermediaries, be they jurists or non-jurists.

DQ is committed to providing the socially excluded with timely legal answers, and to enhancing the legal competences of intermediaries, including social workers and educators. In this manner, they act as prevention workers in relation to legal risks (procedures, evictions, ...)

Among services offered by DQ are:

- A database of over 2150 legal questions and answers;
- A telephone hotline;
- A training programme covering over thirty themes;
- A miscellany of publications, including templates, brochures, educational tools, plain-language contracts.

On the basis of its objectives, the organization has set itself three key tasks:

- 1) In order to ensure that every citizen would, at any given time, have access to relevant legal information, DQ operates a website, [www.droitsquotidiens.be](http://www.droitsquotidiens.be), and two additional online platforms, <http://espace-jeunes.droitsquotidiens.be/fr> and <http://www.langagejuridiqueclair.be>. These websites were hit 250,000 times in 2013.
- 2) DQ is committed to providing legal support to social workers. It has some 850 affiliate organizations, amounting to around 3000 contacts per year. This way, DQ succeeds in reaching 60,000 individuals via intermediaries.
- 3) Central to DQ's supporting role are its web platform with legal information, its telephone hotline for social workers, and its training programmes. Made-to-measure training is provided on the basis of queries received from social workers.

Some figures from the organization's 2013 annual report:

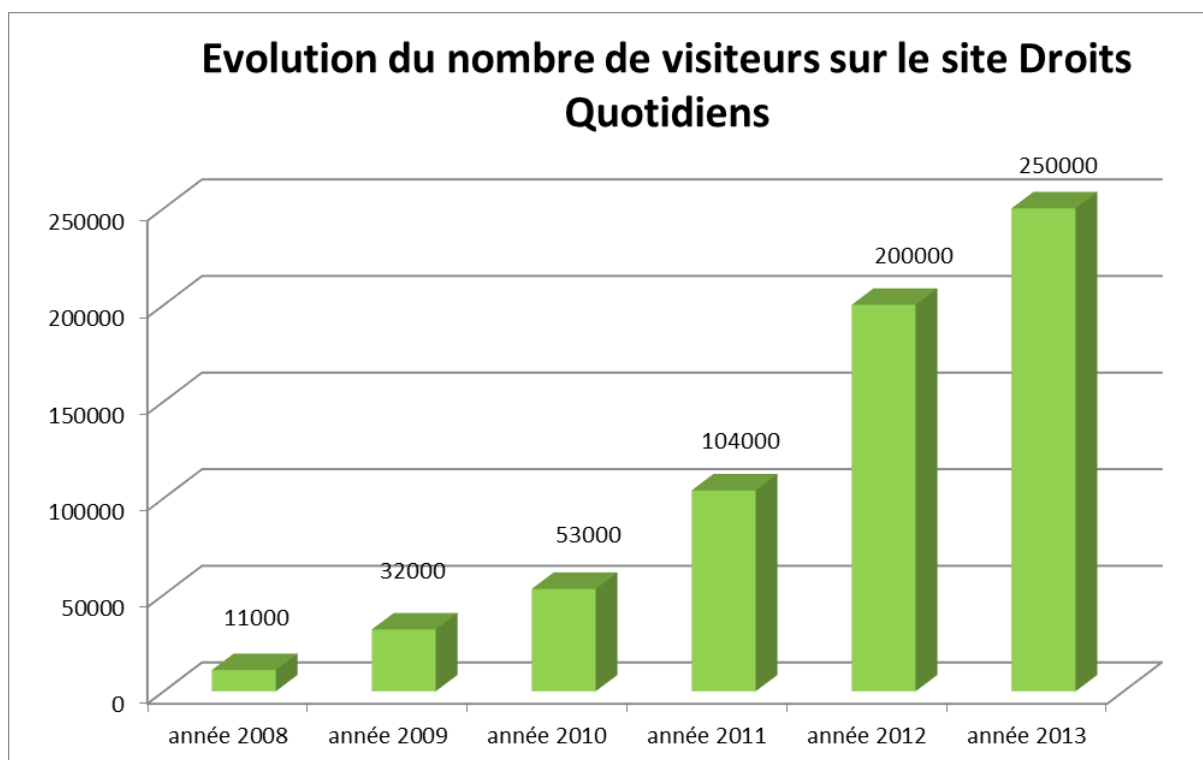


Table 2. Source: Droits Quotidiens

Breakdown of consultations by users: 60% by social workers, 40% by members of the public (80% paid and 20% free of charge).

### 3. Private lawyers

#### 3.1. The legal framework of the organization of legal aid in Belgium

##### 3.1.1. The Commission for Legal Aid

###### a) General framework

Established in 1998, the Commission for Legal Aid was the federal government's initial answer to the fragmented and unstructured offering of first-line legal aid. There were many providers of such aid, but no central body to help coordinate first-line legal services or to enhance the level of collaboration between the various providers. At the same time, the bar association was given an opportunity to strengthen its position in the provision of first-line aid. The policy of the commission is merely influenced by topics that belong to the jurisdiction of the law society as half of the members are lawyers appointed by the local dean. The primary task of the commission is to organize the first-line legal aid provided by practising private lawyers.. The other members are appointed by welfare organizations or public services. Whereas the Commission used to be subsidized by the federal government (Department of Justice), since 2015 it, like the welfare organizations, has been financed by the regional Flemish or Walloon

governments. As previously mentioned, this has complicated the design of a general policy on first-line legal aid. Now, this is up to the policymakers of the Flemish and the Walloon Communities.

First-line provisions are restricted to information and advice. Further support, e.g. with letter-writing or drawing up a contact with the opposing party, is not provided for under the 1998 Legal Aid Act. This contrasts with the provisions offered by the welfare organizations devoted to specific legal areas such as housing, debt, etc. These organizations open files and they try to resolve users' legal problems by writing letters or through mediation. As previously outlined, they continuously provide a broad range of mostly specialized legal services.

b) Some data

Every year, the Commission is required to submit its reports to the Ministry of Justice. The Flemish Bar Association has collected these reports since 2005. On this basis, the University of Antwerp was able to compile aggregated data. Note that, unlike its Flemish counterpart, the Francophone Bar Association did not collect the relevant reports.

The number of consultations made on an annual basis varied between 30,000 and 35,000, except in 2009-2010. Strikingly, the annual number of consultations rose from 2006 up to 2010, after which it declined again, a trend that is as yet unexplained. As the data represent the number of registered consultations, it may be due to supply changes: the number of consulting hours may have been cut, for example. But it may also be the case that fewer people actually called on first-line assistance provided by lawyers.

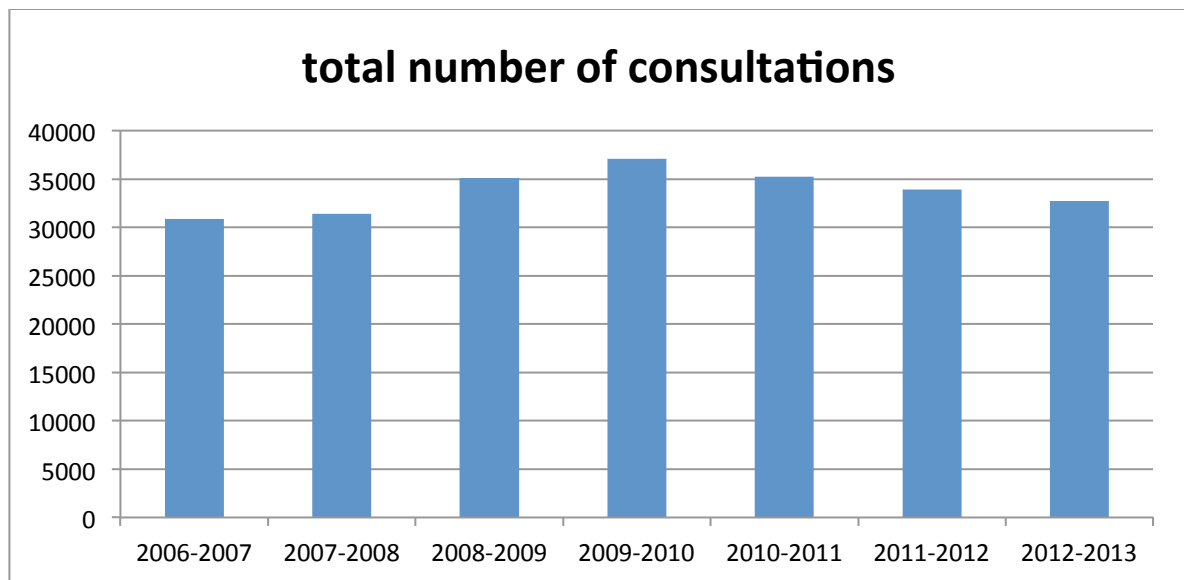


Table 3. Source UA

It emerges that, in the period 2006-2013, family law and property law, particularly rent law and ownership cases, were the most common areas of the law (60%) in relation to

which users sought advice. In addition, criminal law, consumer law and debts, and immigration law each accounted for 6% of the consultations.

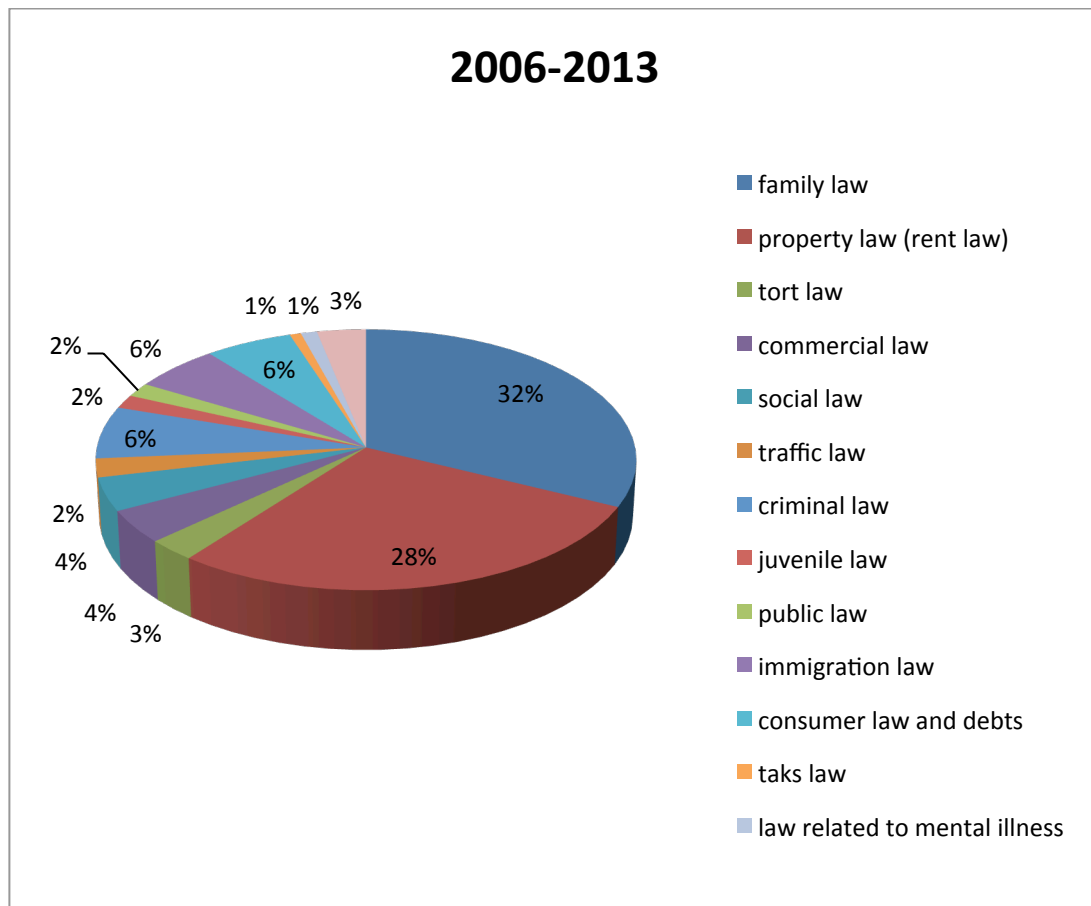


Fig. 4. Source: UA

Looking at gender, it emerges that, over the years, more women than men have sought legal advice, though the difference is not particularly great.

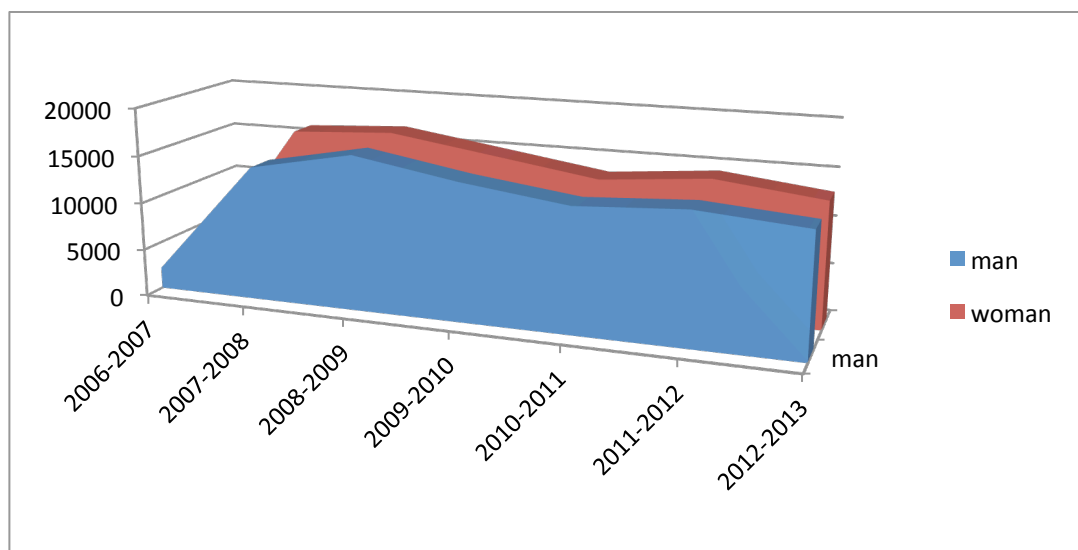


Fig. 5. Source: UA

The majority of consultations are concluded with the provision of information or advice. If clients are referred, the referral is usually either to a private lawyer in the case of paying clients or to a provider of free legal aid in the case of clients of limited means. Referrals to other specialised organizations such as tenants associations, consumer organizations or trade unions are rather exceptional. The fact that clients are rarely referred to non-lawyers is most probably due to a lack of familiarity among lawyers with the welfare organisations and available social legal aid services. It also suggest that lawyers tend to put faith mostly in their peers.

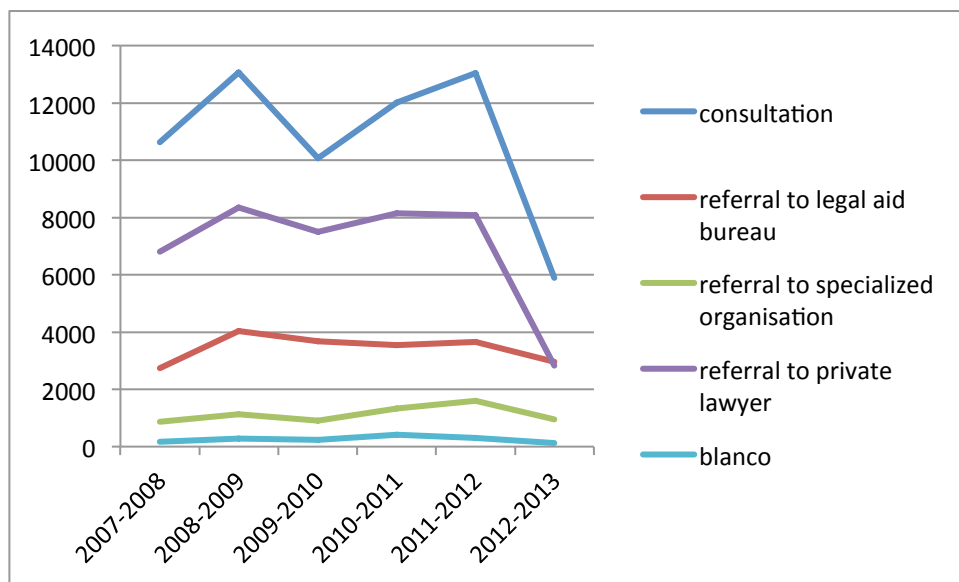


Fig. 6. Source: UA

### 3.1.2. Legal Assistance or Second Line Legal Aid: The Bureau for Legal Aid

While first-line legal aid is open to every citizen, eligibility for second-line legal assistance depends on a means and merits est. Those who are not entitled to second-line legal aid must pay for a lawyer, or, if they have legal expenses insurance, the costs may be covered by their policy. Requests for free legal assistance are to be addressed to a so-called bureau for legal aid, one of which is provided in every legal district under the auspices of the local bar association. Since 2005, the federal government has been subsidizing the costs of the organization. Each bureau is organized independently and is free to determine its own policy.

There are three ways to apply for legal aid. One can ask a lawyer to submit a request to a legal aid bureau on one's behalf, one may be referred by a first-line organization, or one can file a request by visiting a bureau in person.

In special areas such as criminal law cases, the bureau may grant legal aid at the request of the investigating magistrate or the criminal court. Since the Salduz jurisprudence and the promulgation of the Salduz act of 1 January 2012, the presence of a lawyer during police interrogations has become common practice. A special duty counsel scheme has



been set up for the representation of suspects before the investigating magistrate. The Flemish Bar Association has provided software to organize the presence of a lawyer during initial police interrogation. The system requires police to call a designated telephone number where they are informed of which lawyer will attend. The operator subsequently summons the lawyer.

### 3.1.3. Data on Second Line legal Aid

Figure 7 shows the budget for legal assistance (second line legal aid ) over the last ten years. Except for 2011-12 the entire budget for legal aid in Belgium has been increased till the amount of 77.923.000 €. About 44% of the private lawyers in Flanders has done one or more legal aid cases.

Every case stands for a certain amount of points. The average value of a point was in 2012-2013 25, 76 €, the same as the year before, but still less than in 2010-2011 (see figure 8).

Over the last ten years the amount of cases dealt with by private lawyers in Flanders increased form 99 008 in 2003-04 till 220 238 in 2012-13.

Figures from the Walloon Bar Association are hardly available.

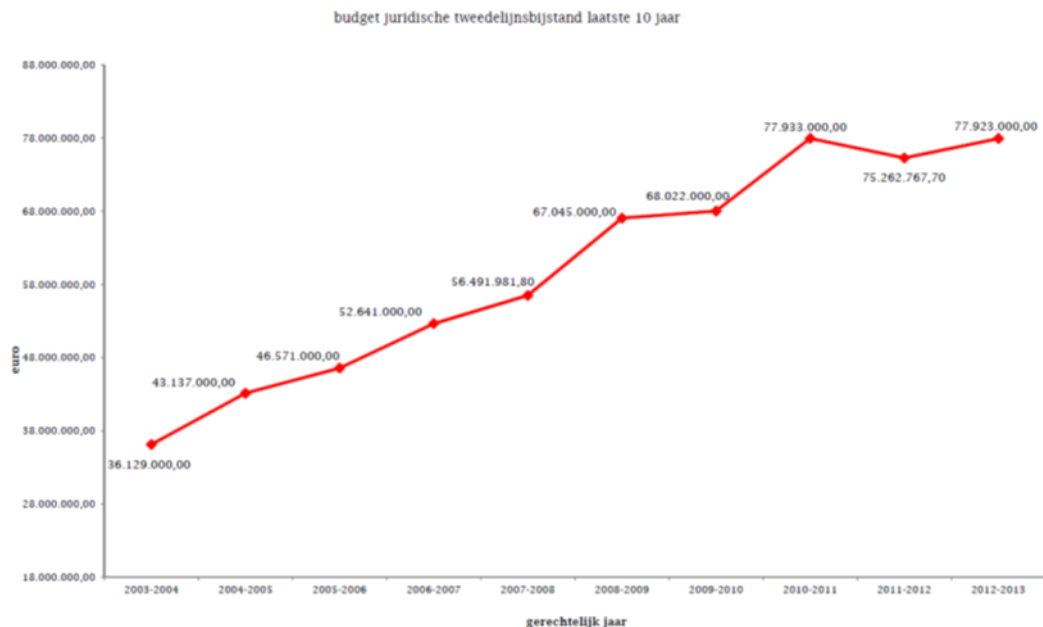


Fig. 7 Source : OVB

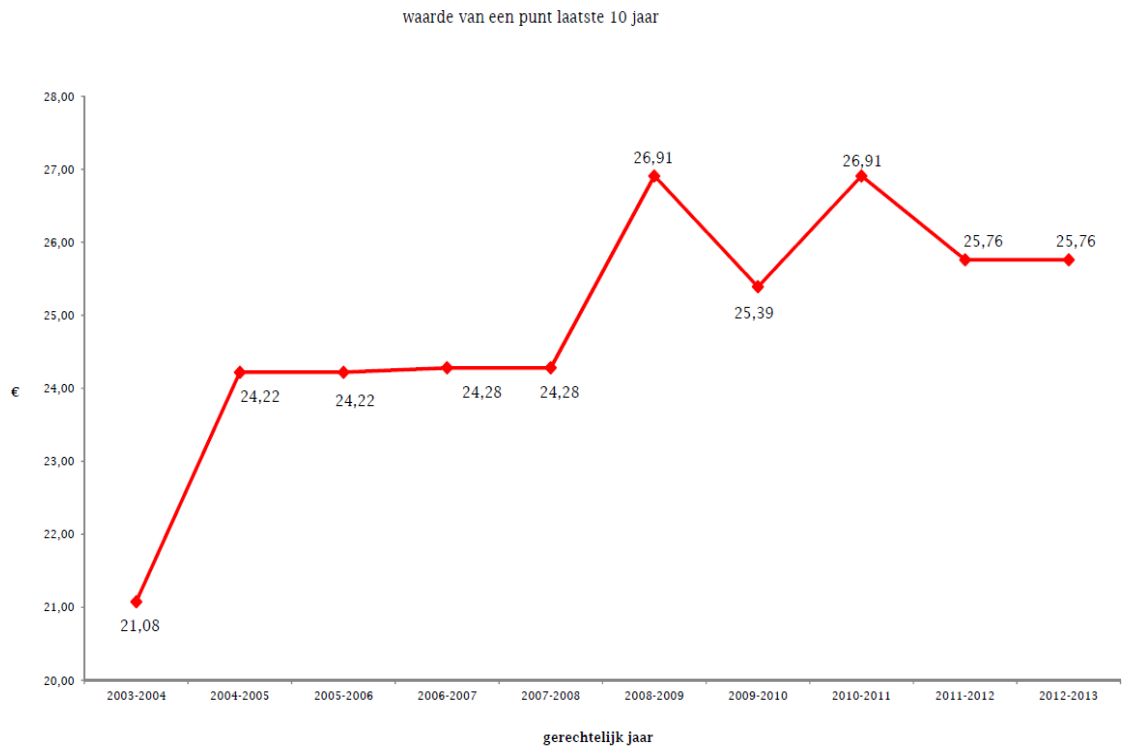


Fig. 8 Source : OVB

- P. BOCKLANDT e.a. *Bouwstenen voor een Vlaams Actieplan online hulp met focus op algemeen welzijnswerk, ambulante GGZ, verslavingszorg en gezondheids promotie, kindercare en opvoedingsondersteuning, bijzondere jeugdbijstand en welzijnswerk voor personen met een beperking*, Welzijn, Volksgezondheid en gezin, rapport 18, 2014
- L. EEMAN & T. VAN REGENMORTEL, *Automatische rechtentoeckenning en proactief handelen*, Leuven, Vlaams Armoede Steunpunt, 2013
- S.GIBENS, "Een wandeling door het digitale landschap van de sociale juridische dienstverlening. Op weg naar een e-SJD" in S. BOLINGER & H. VAN 'T BLIK (ed.) *SJD en de nieuwe kwetsbaarheid. Een caleidoscopische blik op 25 jaar Sociaal Juridische Dienstverlening*, SDU, Den Haag, 2014, 107-118.
- S. GIBENS & B. HUBEAU, "Socially Responsible Legal Aid in Belgian Society: Time for a Thorough Rethink", *International Journal of the Legal Profession* 2013, 67-86
- S. GIBENS & B. HUBEAU, "Legal Aid and Housing Issues", in *Legal Aid in the Low Countries*, Cambridge/Antwerpen, Intersentia, 2014, 141-160
- B. HUBEAU & A. TERLOUW (ed.), *Legal Aid in the Low Countries*, Cambridge/Antwerpen, Intersentia, 2014
- B. HUBEAU, "Geen beroep doen op het recht is geen optie: over de afdwingbaarheid van sociale grondrechten en het sociaal werk", in K. DRIESSENS, e.a., *Een Caleidoscoop van sociaalwerkonderzoek*, Leuven/Den Haag, Acco, 2015, 81-98
- F.G INCHAUSTI, 'Electronic Service of Documents National and International Aspects', in: M. KENGYEL & Z. NEMESSANY (eds.), *Electronic Technology and Civil Procedure*, Ius Gentium : Comparative Perspectives on Law and Justice 15, Dordrecht, Heidelberg New York London: Springer, 2012,
- PLEASANCE, e.a., *Reshaping Legal Assistance. Building on the Evidence Base*, Law and Justice Foundation of NSW, 2014
- STEUNPUNT TER BESTRIJDING VAN ARMOEDE, BESTAANSZEKERHEID EN SOCIALE UITSLUITING, *Justitie als hefboom voor een daadwerkelijke rechtsgelijkheid voor iedereen*, Brussel, Steunpunt, 2014
- F. VANNESTE, "De zesde staats hervorming: justitie en (deelstatelijke) administratieve rechtscolleges", in A. ALEN, e.a. (ed.), *Het federale België na de Zesde Staats hervorming*, Die Keure, 2014, 437-455
- W. VANDENBRUWAENE, "Justitie: strafrechtelijk beleid, jeugdsanctierecht en justitiehuzen", in J. VELAERS, J. VANPRAET, Y PEETERS & W. VANDENBRUWAENE (ed.), *De Zesde Staats hervorming. Instellingen, bevoegdheden en middelen*, Cambridge/Antwerpen, Intersentia, 2014, 295-313
- I. VASSILEVA, *E-JUSTICE CONCEPT Proceedings of the International Conference on Information Technologies (InfoTech-2007), 21st– 22nd September, 2007, Bulgaria*, 6p, [www.tusofia.bg/saer/proceedings/2007/Volume1/A204.pdf](http://www.tusofia.bg/saer/proceedings/2007/Volume1/A204.pdf).