

**INTERNATIONAL LEGAL AID GROUP CONFERENCE:
8 TO 10 JUNE 2005 – KILLARNEY, IRELAND
NATIONAL REPORT – BELGIUM**

1. BELGIUM'S LEGAL AID SYSTEM

The previous national report, presented in 2003 on the ILAG conference in Boston, reported on the 1998 Legal Aid Act. It is the cornerstone of the present legal aid system which can be described as a pure *judicare* model. The system is predominantly focused on the remuneration of advocates. It is up to the bureaus for legal aid (Bureau voor Juridische Bijstand) to appoint - on request of someone seeking justice or on duty base - an advocate free of charge. The eligibility criteria and a merits test determine if a person is entitled or not to legal aid. If a person is dismissed by the bureau, they can appeal to the labour court.

The bureaus are decentralised and are part of the local bar (27 on district level). After a case is dealt with, the advocate reports to the bureau. They receive a final report from the bureau based on a point system. Every year, depending on the fixed budget accredited by the Minister of Justice, a point will be valued. The bureau pays out once a year.

As well as the bureaus for legal aid, Commissions for legal aid organise legal advice by advocates. These commissions (27 on district level) are independent organisations, subsidised by the Justice Department. They are not only composed by advocates, but also by lawyers from social welfare organisations and lawyers from legal clinics. The latter are part of the commissions due to their experience on the subject. To understand this structure one should pay attention to the Belgian federal State structure. The organisation of legal aid is a federal matter. The aid of people facing welfare problems - whether or not social or legal - is a regional matter and is the authority of welfare organisations and legal clinics. This division of authority causes a lot of difficulties to gear legal aid to one another

and it also fragments the jurisdiction of legal aid.

For a full report on the legal aspects of the 1998 Legal Aid Act I would like to refer to the national report of 2003.

2. IMPORTANT LEGAL CHANGES

Since the last national report on legal aid in Belgium, some important legal changes have taken place. One could describe these changes as a minor flow, but they seem to have a considerable impact on the demand of legal aid. These changes are the first results of the Minister of Justice's plan to reorganise legal aid more profoundly. These legal changes are apparent in the Minister's plan to improve access to justice.

a. Legal advice for free

Article 373 of a special governmental act of 2003 has withdrawn the duty of every person seeking justice to pay 12.40 € or to prove his insolvency for an advice given by an advocate who is paid by Commission. Although the Flemish Law Society and its French-speaking counterpart have argued from the beginning of the Legal Aid Act to abolish this impediment to legal aid, it lasted more than 5 years before the act was reformed. Nowadays general advice given by an advocate, who is listed by the Commission and is acting on his behalf, is really for free.

b. Increase of eligibility criteria

The same special governmental act of 2003 has increased the eligibility criteria.

A single person is entitled to an advocate free of charge if his earnings are less than 750 € (since January 2005: 765 €) a month instead of 666 € before January 2004. If people are cohabitating or are married, whether or not with depending persons, they are entitled to an advocate free of charge if

their monthly income involves less than 965 € (since January 2005: 984 € (+ 79 € for every depending person (since January 2005: 82 €).

If the monthly net income of a single person exceeds 750 € (since January 2005: 765 €) but it is still limited to 965 € (since January 2005: 984 €) he can obtain an advocate for free, but he has to pay a small contribution (no more than approximately 125 € per case). The demand of the cohabitants and the married people will be well-founded whenever their income varies between 965 € (since January 2005: 984 €) and 1 117 € (since January 2005: 1 200 €) (+ 79 € for every depending person (since January 2005: 82 €).

The eligibility criteria are index-linked and change every year as already mentioned.

c. Who pays the cost of going to appeal?

If a person who applied for legal aid, is dismissed by the bureau for legal aid, he can appeal to the labour court and further on to the Labour Court of Appeal.

The labour courts are familiar with social-legal issues. In order to reduce access barriers to the labour courts, procedural law is less official than in other legal matters. To bring the appeal before court, a registered letter is sufficed. No legal costs are payable by the appellant if they lose their case. Indeed, it is an exception to the general rule that the loser pays the legal costs. Since the 1998 legal aid did not determine who would have to pay the legal costs, the labour courts have decided that although the person seeking justice may have lost their case, the local bar as representative of the bureau for legal aid will be ordered to pay the costs. The law societies, having disapproved these sentences have lobbied a bill through parliament in order to reform the sections on legal costs in legal aid matters. From then on the general rule of legal costs has been applied to legal aid matters brought before the labour court. Hence, if a person loses their case, they are obliged to pay the legal costs. It is a new threshold as a way of improving access to justice. However another solution could have satisfied both parties. More attention had to be paid to the legislation that determines how people can request legal costs for free. If a person's request for an advocate free of charge is

granted, it does not mean that he is entitled to legal costs for free. The Belgian law provides two separate procedures. The assistance of an advocate is the authority of the bureaus for legal aid. It is up to the judges to decide whether or not a person pays the legal costs. In contrast with the situation where legal costs have to be paid by the losing party, the procedure before the judges is free and no legal costs can be charged at all. It is rather striking why both procedures were not linked to one another.

d. The temporary end of the general legal expenses insurance?

In 2003 the Minister of Justice announced the introduction of a general legal expenses insurance. It was part of her plan to improve the access to justice. Notwithstanding her intentions, the Minister had to cope with the negative comments of the insurance companies. These companies regarded the introduction of a general legal expense insurance – legal expenses insurance do already exist in an add-on insurance policy - as too expensive and unrealistic (what about moral hazard and inverse selection?). The insurance companies also draw the attention to other ways of resolving disputes, eg reconciliation and arbitration. It appears that the Minister of Justice has abandoned the idea of a general legal expenses insurance. The proposition of introducing legal expenses insurance concerned both Law Societies, the Flemish and the French speaking and as a result both societies organised a general assembly on the subject "of legal expenses insurance" following which a profound silence fell...

3. LEGAL AID POLICY IN BELGIUM

Does a real legal aid policy in Belgium exist? Comparing Belgium to neighbouring countries such as the Netherlands, England and Wales, the answer is rather negative.

No consistent data is available on the need of legal aid, nor on the supply side. How many advocates are participating in legal aid? How many cases on average do they accept? How many advocates make their living from it? What about the balance between demand and supply? What about the quality of work?

a. Lack of a general policy

One has to conclude that there is a lack of policy. If data is available, it is thanks to the work of only a few people who are trying to get an overview on legal aid in Belgium. The protagonists are more likely to discuss on ideological grounds rather than on facts and figures. The present legal aid system has never been evaluated.

b. General data

Despite the absence of policy documents and annual reports, we will try – with the usual reservation – to give a statistical overview. Because of the split up of the National Bar Association into a separate Flemish and a French Speaking Law Society in 2002, no general data could be obtained. The data will sometimes be restricted to the Flemish situation.

The impact of the increase of eligibility criteria on the demand side of legal aid

The Minister of Justice has increased the eligibility criteria since January 2004 by approximately 14% compared to the previous criteria. She probably did so without calculating the possible effects on the legal aid system. How many people will be qualified for legal aid? There will probably be an increase but by how much?

A micro simulation, done by the university of Antwerp, based on the data used for household panel studies, seems to suggest that the increase of the eligibility criteria has doubled the potential population. As hypothesis the researchers accepted: how many people would be entitled to an advocate free of charge if the 2004 eligibility criteria were applied to the population in 2001¹.

¹ The data of 2001 are the most recent figures, reason why this hypothesis has been set forwards

Table 1 shows the 2001 situation, using the eligibility criteria of that time. Approximately 11% of the Belgian population was entitled to free legal aid, 4.5% of the Belgian population had to pay a small contribution, 89% of the population had to pay their

advocate. The 11% of the population approximates to the “poverty rates” in Belgium, which was not surprising because the eligibility criteria matched the social benefits.

TABLE 1

2001	Households	
VKJB ²	GKJB ³	Not entitled to legal aid
6.5% (146)	4.5% (103)	89% (2 035)

N= 2 263

² fully entitled to legal aid

³ has to pay a small contribution

Table 2 shows the results of the simulation of the eligibility criteria of 2004 on the population of 2001. The potential population on legal aid has doubled. 21% of the Belgian

population would be entitled to legal aid when facing legal problems. Hence, it is not just marginal groups who are granted to legal aid, but also working people.

TABLE 2

2001/2004	Households	
VKJB	GKJB	Not entitled to legal aid
10.9 % (248)	9.3% (219)	76.2% (1 801)

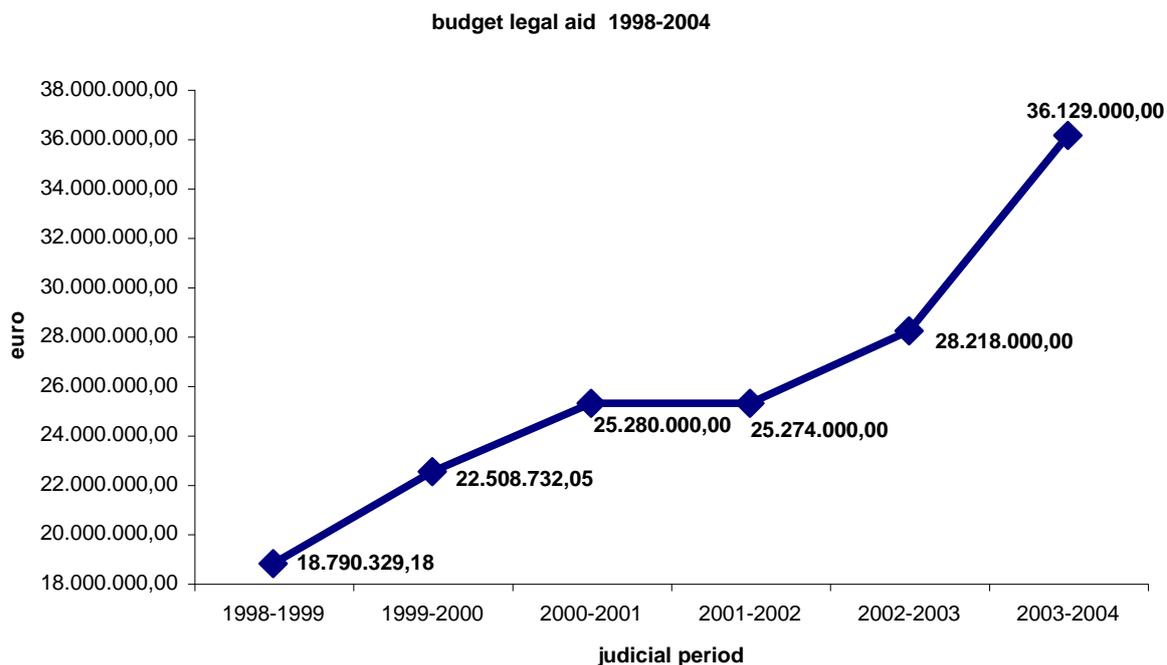
N= 2 268

The increase of the accredited budget

While the Minister of Justice has opted to review the eligibility criteria, she also irritated the Law Societies by promising a 28% rise of the accredited

budget. The budget of 2002-2003 has already been multiplied with 10% from 25 million € to 28 million €. In the period 2003-2004 this would mean a total budget of 36 million €.

GRAPH 1



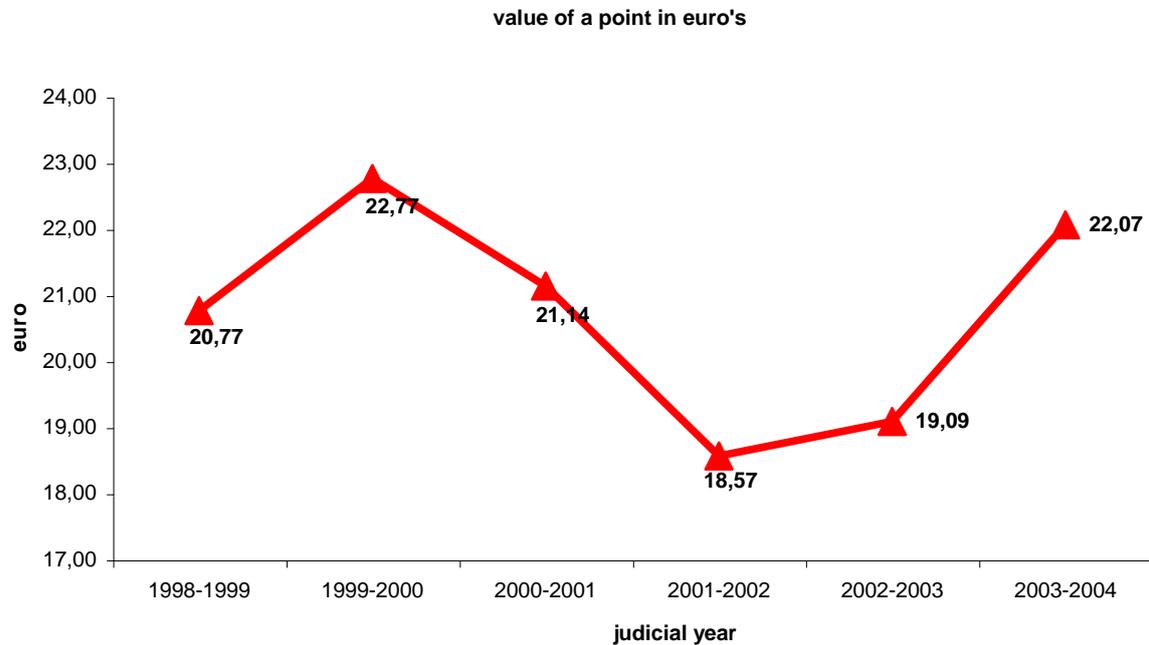
Source : Flemish Law Society

But despite the rise of the budget, no one seems to have calculated the impact on the value of the point given to the advocate as a reward. As explained in the previous national report on legal aid in Belgium, the

Minister of Justice has set up a list of legal affairs and accredits these cases by points. Every year the local bars calculate the points and divide the budget by the gathered points.

It means that the value of a point changes every year. Graph 2 shows the evolution of the value of a point over the last 6 years.

GRAPH 2



Source : Flemish Law Society

The income of the legal aid advocate is improving, but it has not yet equalised to the situation of 1999-00.

One should also notice that the local bars are allowed to decrease the total amount of money they get to pay out their advocates, with 4.5% since 2004, - previously it was only 2% - in order to finance the organisation of the bureaus for legal aid.

Advocates who are participating in the legal aid system are handing over 4.5% of their income to the legal aid organisation.

Besides handing over of a small part of the advocates' wages to the local bars, one has to take into account that the value of the

point of 2003-04 is partly based on the period of the increased eligibility criteria. It probably means that in the next years - referring to the micro-simulation - the demand side will expand and will affect the value of a point if the accredited budget remains the same.

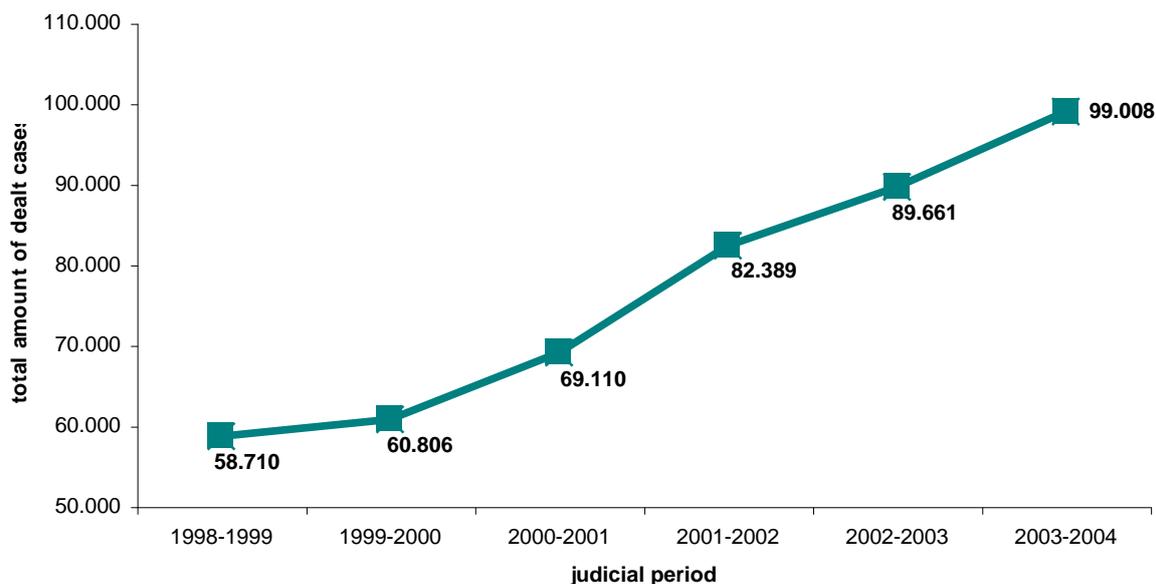
Graph 3 indicates that during the last 6 years the amount of cases dealt with has risen every year. The table only shows the dealt cases and not the matters started. The Flemish Bar Association has recently collected the data of the matters started.

Between 2003-2004 the matters started have risen by 7%, while the dealt cases have increased by 6.3 %.

Matters started in Flanders in :	Dealt cases in Flanders:
- 2003 : 63 423	- 44 542
- 2004: 67 908	- 44 167

GRAPH 3

total amount of dealt case in Belgium 1998-2004



Source : Flemish Law Society

May the increase of the cases be attributed to the rising rates of participating advocates?

It is not proven that advocates are doing on demand creation. Although one cannot deny that during the last few years more

advocates have entered the bars and more advocates are participating in the legal aid systems in proportion of the increasing rates of new advocates. From 26% in 1999 to 35% in 2004.

TABLE 3

Participating advocates in legal aid in proportion to the total population

	1999	2000	2001	2002	2003	2004
Legal aid	1.879	1.942	2.194	2.422	2.639	2.892
All advoc	7.109	7.134	7.233	7.582	7.882	8.150
	0,26	0,27	0,30	0,32	0,33	0,35

Source : Cross controls report 2004, Annual Report of the Flemish Law Society 2003, p. 31.

4. CONCLUSIONS

What are the conclusions that can be drawn from the legal aid measures in Belgium over the last two years?

- Some sections of the 1998 legal aid act have been changed in favour of the advocates and some of the sections in favour of the demand side.
- One may regard the increase of the eligibility criteria as an improvement to access to justice. The thresholds

for the first line services have been abolished.

- Less interesting for the people seeking justice is the revised section on the accountability of the legal costs.
- The debate on the introduction of general legal expenses insurance has fallen down. No real attempts are made to restart the discussion. This means that a person who earns a little too much in proportion to their less fortunate neighbour - who will be entitled to legal aid - has to pay the

costs of the assistance of an advocate and the legal costs themselves.

- No real policy on legal aid in Belgium has been set up. The Minister has increased the eligibility criteria without calculating the potential effects on the demand side and on the accredited budget. The remuneration of advocates, as we may believe some calculations, will face an insecure future. If legal aid cases are no longer profitable, this will be reflected on the supply side who will most likely handle less cases.

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29th April 2005