Legal Aid in the Netherlands

a broad outline - Edition: May 2019
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Legal Aid in the Netherlands

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

Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen of the Netherlands has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive state-financed legal aid.¹ The Dutch Legal Aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act (in force since 1994; the last amendment in the regulations took effect on February 1st, 2015). The Legal Aid Act of 1994 replaced the prior statutory system that dealt with the supply of legal aid and dates back as far as 1957.

Given their financial means, approximately 38% of the Dutch population (with a total of 17 million people) would, according to the latest estimates, qualify for legal aid if circumstances so require. The legal aid itself is mainly financed by the state (the Legal Aid Fund) and only for a minor part by an income-related contribution of the individual client.

Residing under the competence of the Ministry of Justice & Security (J&S), an independent governing body called the Legal Aid Board (‘Raad voor Rechtsbijstand’, LAB) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. This includes matching the availability of legal experts with the demand for legal aid, as well as the supervision and quality control of the actual services provided. Regularly, figures are published that report on the previous years’ situation. The LAB consists of five regional offices and one central office.

¹ Constitution of the Netherlands Art. 17: ‘No one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law’. Art. 18 ‘(1) everyone may be legally represented in legal and administrative proceedings. (2) Terms concerning the supply of legal aid to persons of limited means shall be laid down by Act of Parliament.’
Being financed by the Ministry of J&S, the LAB accounts to this ministry for its budgetary allocations. The legal aid system operates according to an open end provision. Since the beginning of the system in 1994, spending on legal aid more than doubled in 2012. However, the upward trend then came to an end and since 2014 it decreases (see Table 1).

Table 1  Dutch population and expenditure on legal aid

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Dutch population*</td>
<td>15,300</td>
<td>15,650</td>
<td>16,105</td>
<td>16,334</td>
<td>16,575</td>
<td>16,829</td>
<td>16,979</td>
<td>17,181</td>
</tr>
<tr>
<td>Total expenditure on legal aid in Euro*</td>
<td>184,000</td>
<td>195,000</td>
<td>315,000</td>
<td>398,000</td>
<td>472,000</td>
<td>432,000</td>
<td>432,000</td>
<td>395,000</td>
</tr>
<tr>
<td>Expenditure per capita in Euro</td>
<td>12</td>
<td>12</td>
<td>20</td>
<td>24</td>
<td>28</td>
<td>26</td>
<td>25</td>
<td>23</td>
</tr>
</tbody>
</table>

*in thousands

Threefold model
The Dutch legal aid system is basically a threefold model in that it encompasses three ‘lines’ that provide legal aid (see figure 1 for a schematic representation). The legal aid system, therefore, is a mixed model, consisting of a public preliminary provision, public first-line and private second-line help.

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2 Both in 2008 and in 2010, the Parliament of the Netherlands have decided to cut the costs of legal aid by € 50 million euros per year in order to prevent them from becoming even higher. In the last couple of years, new ideas for cutbacks have been made and are still being made. At the end of this brochure the plans for cost reduction will be discussed in greater detail.
1. Online self-help, information and support is offered on the Rechtwijzer website (Rechtwijzer translates into Roadmap to Justice; see [www.rechtwijzer.nl](http://www.rechtwijzer.nl)). Rechtwijzer is a preliminary provision and offers interactive ‘decision trees’ helping people to assess their situation. In addition Rechtwijzer provides easy-to-understand information and guidance on possible solutions for the most common legal problems. Rechtwijzer combines publicly run guided pathways for common legal problems with online products and services from private service providers. The Legal Services Counters (see section 2 below) also have a website that can be seen as a preliminary provision.
2. *The Legal Services Counters* act as what is commonly known as the ‘front office’ (primary help). Legal matters are being clarified to clients and information and advice given. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. If necessary, clients can also be referred to other professionals or support agencies.

3. *Private lawyers and mediators* provide legal aid in more complicated or time-consuming matters (secondary help) in the form of certificates. A lawyer (or mediator) submits an application to the LAB on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the LAB to provide their services to clients of limited means. Generally they are paid a fixed fee according to the type of case, although exceptions can be made for more time consuming cases.

To some extent, trade unions and consumer organisations also provide legal aid. The number of legal aid insurance policies continued to rise for a long time and has stabilized around 42% of the Dutch households since 2010.
1 Preliminary provision: Roadmap to Justice (Rechtwijzer)

The LAB remains committed to the development of innovative web-based applications for citizens, by offering the website Rechtwijzer (www.rechtwijzer.nl). Rechtwijzer is a preliminary provision that helps people find solutions for their legal problems in an interactive manner. In this way, citizens are empowered to navigate easy-to-use processes to solve their problems. In their own time, at their own pace, against low or no cost, and with assistance when needed. Rechtwijzer combines publicly run guided pathways for common legal problems with online products and services from private service providers meeting Rechtwijzer’s rigorous quality standards.

For instance, Justice42 offers the online divorce platform uitelkaar.nl, with public legal aid available for low-income clients. In 50% of the cases, one or both (ex)partners receive public legal aid, showing that a considerable part of the target group of legal aid is capable of using online services. Another private provider on Rechtwijzer is the Arbeidsmarkt Research Institute based at the University of Amsterdam. They offer MagOntslag, a tool for assessing the legal merits of a dismissal case.

Rechtwijzer is continuously being further developed and improved through feedback from users and service providers. New applications, such as a quick scan for multi-problems and a tool for assisting informed decision-making are being developed in close cooperation with respectively a renowned national social services organization Mind Korrelatie and a consumer rights organisation. And new grounds are being tested, such as the experimental space featuring Rechtwijzer and supplementary offline services in local libraries.
2 First-line legal aid: Legal Services Counters

Organisation of Legal Services Counters
The LSC act as front offices that provide primary legal aid. They are fully financed by the Legal Aid Board on the basis of a closed budget.

The organisation ‘LSC’ is made up of 30 offices around the country. These 30 offices share a website and a call centre. They have been evenly set up geographically, so that every Dutch citizen is within easy reach of a Legal Services Counter, at a maximum of approximately one hour journey by public transport. The 30 offices have a uniform and recognisable appearance. The premises of the Counters have been designed to look as inviting to visitors as possible. Actually, they look more like a shop than an office. Inside is an open space with a waiting area and several desks. The call centre and rooms for private consultation are located at the back of the shop. There are also shelves with brochures containing information on legal matters. In general, each LSC is staffed with legal advisers. Some Counters, particularly those in major cities, employ more staff. Since the services of the current Counters do not include extensive legal aid and representation in court, paralegals can also be employed. The Dutch bachelor education system developed a law course to train students for this kind of job some years ago.

The legal advisers at the Counters work in turns, both in the call centre (inquiries both by telephone and e-mail), at the counter, and in the consultation rooms. The call centres of all the Counters are interconnected in order to spread the workload evenly. Sophisticated computer software, specifically designed for the LSC, is at the staff’s disposal and helps them to answer the client’s questions. In addition to the 30 offices, a large call centre was opened some years ago,
which employs approximately 40 people. In 2015 a (political) discussion has led to the decision that there will be more focus on the call centre activities and less on the face-to-face activities where people can visit without appointment. The consultation hours, for which people have to make an appointment, remain intact.

Tasks and procedures of the Legal Services Counters
As outlined above, the LSC act as front offices that provide primary legal aid. They offer information concerning rules and regulations as well as legal procedures. They give advice and refer clients to private lawyers or mediators if their problems turn out to be more complicated or time-consuming. All services are free of charge. Although the LSC are basically open to any Dutch citizen, the aid is mainly intended for persons of limited means who qualify for legal aid. Clients can turn to the Counters with all kinds of judicial problems that concern civil, administrative, criminal as well as immigration law.

The initial contact at the Counters is meant to clarify the nature of the problems and helps staff members to find out:

- whether the problem is actually a legal problem and, if so,
- whether the problem is within the scope of the legal services provided by the Counters (not all legal problems – e.g. those between businesses – are dealt with by the Counters);
- what kind of help is most suitable for the client.

Staff of the LSC themselves are not allowed to act on behalf of the client. The focus on primary legal aid is meant to serve two major goals. First, the help provided is readily available and free of charge. That is why the LSC are generally regarded as easily accessible and fairly informal. Secondly, they have an important screening function,
in that they tackle disputes and legal problems at an early stage and thereby help to avoid escalation as well as minimise costs, both for the individual in question and for society at large. This latter aim has been reinforced since the diagnosis and triage measure took effect (1 July 2011), which encourages potential clients to contact the LSC before approaching a lawyer.

There are several channels available by which potential clients can apply to the LSC for help: the website, e-mail, telephone, counter or referral to a consultation hour (by appointment), see figure 2 below. If the case requires in-depth help by a professional the client can be referred to a private lawyer or a mediator, who has agreed to be available for these referrals. The choice of a specific professional is based on his availability, his specialism, the travel distance between his office and the client’s home, and the number of referrals that he has recently obtained. Software that was specifically designed for this purpose helps the Counter’s staff to evenly distribute referrals among the lawyers available for referral. As soon as the referral is made, the lawyer receives an electronic message with information regarding the client and his problem, and with the preliminary advice (if any) that the client received from the LSC. The client has been informed by the Counter on the terms and procedures of the legal aid system.
Legal Services Counters: facts and figures
The total number of 'client activities' performed by all 30 LSC in 2018 amounted to 740,000. This means that in 2018 the counter staff performed a specific activity for a client 740,000 times. A client activity may take place by direct contact with the client through any of the contact channels – 'the contact time' – or through other activities such as research needed in order to give proper advice in a certain case and consultation with the other party.
Below, figures can be found concerning the nature of these client activities at the LSC. Most client activities consist of contact by phone (57% of the client activities) (see table 2).

### Table 2  Nature of client activities of Legal Services Counters (2018)*

<table>
<thead>
<tr>
<th></th>
<th>Total number 2018</th>
<th>Percentages 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contact time</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone 0900</td>
<td>409,000</td>
<td>55</td>
</tr>
<tr>
<td>Counter</td>
<td>92,000</td>
<td>12</td>
</tr>
<tr>
<td>Consultation hour</td>
<td>41,500</td>
<td>6</td>
</tr>
<tr>
<td>Telephone, other</td>
<td>14,000</td>
<td>2</td>
</tr>
<tr>
<td>E-mail</td>
<td>62,500</td>
<td>8</td>
</tr>
<tr>
<td><strong>Non-contact time</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Researching</td>
<td>120,500</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>740,000</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

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

A client may have contacted the LSC on more than one occasion in 2018. That’s why the number of clients is lower than the number of client activities shown above. Clients are estimated to contact LSC on approximately 2 to 3 occasions per person per year (about the same or different problems).

The LSC provide several kinds of services. The majority deals with providing information and answering questions (78%). Clients are also referred to the consultation hours (5%), to lawyers (14%), to mediators (<1%) or to other chain partners (2%).
Figure 3 shows how client activities at the Legal Services Counter are spread over the various fields of law. The majority of inquiries concern family law issues (21%), employment (20%), and contract/consumer law issues (15%).

**Figure 3 Fields of law (2018)**
3 Secondary legal aid: Certificates

In order to obtain a certificate, a (Board-registered) lawyer needs to submit an application to the LAB on behalf of his client. Most applications (more than 95%) are submitted electronically. The Board assesses each application both in terms of the client’s income and assets and the (financial) significance of the legal problem in question. Figure 4 shows the route followed by the application for a certificate.

Figure 4 Schematic representation of a certificate application
Financial assessment of the applicant: eligibility for legal aid

The eligibility for legal aid is based on both the client’s annual income and his assets. The LAB verifies the client’s personal data with those in the municipal population register and checks the applicant’s income and assets with the tax authorities. It is able to do so with the aid of a ‘burgerservicenummer’ (citizen service number) (BSN); this is a unique identification number, which every Dutch citizen receives when registering in the municipal population register. Thanks to online connections with the tax authorities, the Legal Aid Board is able to rapidly obtain information concerning the applicant’s income and assets. Additionally, also non-Dutch litigants receive legal aid when they have a problem that concerns the Dutch legal system.

Assessment of the applicant’s income and assets level (and hence his eligibility for legal aid) is based on his situation two years prior to the application date, the so-called reference year (t-2). The reason to use that year’s data, is that those data have generally been found correct and therefore final. So, for a certificate to be granted in 2018, the applicant’s income in 2016 is decisive. In order to qualify for legal aid in 2018, the applicant’s income in 2016 should not be higher than € 26,900 (single person) or € 38,000 (married persons / single person with children). The applicant’s assets must not exceed € 24,437.3

However, requests can be made to change the reference year, if the applicant’s income and/or assets in the year of application has decreased substantially compared to that in the reference year. This holds if the applicant’s reference-year income and/or assets would not make him eligible for legal aid, whereas his present income and/or assets will. If an applicant wishes to be eligible for a lower contribution, his income needs to have decreased by at least 15% compared to the reference year.4

When a client receives a certain sum of money because of the result of a procedure, his certificate will be withdrawn retroactively. He will be expected to pay his own lawyer.

3 Under certain conditions, applicants of 65 or over are allowed higher maximum assets.
4 In 2018, more than 10,000 requests to change the reference year were made. This amounts to 2.5% of the total of legal aid certificates granted. This is checked two years after the application.
High Trust

Until recently, the significance of the legal problem in question was also reviewed in advance with each separate application for legal aid. However, since the introduction of the High Trust method (see below) this no longer applies to each separate application.

Many lawyers regarded the application for a certificate as burdensome and time consuming, and the verification as bureaucratic. Therefore alternatives were considered to simplify the verification of applications and expense statements. The LAB introduced a High Trust method for dealing with the applications for certificates. This High Trust method implies that the LAB and lawyers work together on the basis of transparency, trust and mutual understanding. The High Trust method involves greater compliance on the part of the legal profession, both as to administrative proceedings of rules and working in accordance with the law, fixed procedures and support facilities such as Kenniswijzer (an online tool of the LAB with information about legislation, jurisprudence and guidelines for the application of certificates). The LAB develops specific tools for compliance assistance, such as information and instruction meetings, which are free of charge for lawyers under High Trust. The basic philosophy underlying High Trust is that trust among a larger group of people will more readily lead to positive cooperation and compliance than institutionalised distrust. Inquiries amongst lawyers confirm this. The number of offices that are time consuming for the LAB in dealing with applications is fast diminishing. At the same time, the number of offices that have a good relationship with the LAB is increasing fast.

In 2009, the Board started with its first High Trust pilot. Since 2011, the Board has been implementing High Trust across the country in phases. At the end of 2018, more than three quarters of the certificates are issued to lawyers who works based on the principles of High Trust.
It has become easier for providers of legal aid to apply for certificates without having to send documents along with their applications. The Board grants the certificate shortly after assessing the client’s eligibility for legal aid. The applications of the lawyers that work together with the Board according to High Trust are accepted automatically. This means that the client will very soon be confirmed whether or not his application is granted.

Verification takes place after the provider of legal aid has submitted the statement of expenses. There are two ways of verification: either verification on the basis of a random sample, or verification on a one-on-one basis of certificates granted.

**Client’s contributions and the ‘diagnosis and triage’ procedure**

The costs of legal aid are not only paid by the LAB, but are partly covered by a contribution from the client himself. This personal contribution, though often covering only a small part of the actual expenses, is meant to incite clients to carefully weigh the pros and cons of taking a matter to a lawyer, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.

In July 2011, the ‘diagnosis and triage’ procedure was implemented. The procedure encourages those seeking justice to first submit their problem or dispute to the Legal Services Counter. It was expected that it would be possible to solve more legal issues and problems at an early stage or via a different channel if they are first submitted to the Legal Services Counter. As a result, the number of future applications for certificates was expected to drop.

People seeking justice are encouraged to visit the Legal Services Counter before approaching a lawyer by offering them a discount of € 53 on the individual contribution, should it turn out that a certificate is needed after all.5

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5 There are also cases in which the discount is automatically given, for example in criminal cases.
In 2018, the contributions to be paid by clients varied from € 143 to € 823 per case (according to their income, see Table 3). The third column shows what a person pays if he first submits his problem to the LSC. Individuals whose household income exceeds € 38,000 (partner income included) or € 26,900 (single) are not entitled to legal aid.

**Table 3  Income and client’s contribution, from 01-01-2018**

<table>
<thead>
<tr>
<th>Taxable annual income:</th>
<th>Client’s contribution</th>
<th>Taxable annual income:</th>
<th>Single</th>
</tr>
</thead>
<tbody>
<tr>
<td>married/single with child(ren)</td>
<td>Without discount</td>
<td>With discount</td>
<td></td>
</tr>
<tr>
<td>≤ € 26,500</td>
<td>€ 196</td>
<td>€ 143</td>
<td>€ ≤ 19,100</td>
</tr>
<tr>
<td>€ 26,501 t/m €27,500</td>
<td>€ 360</td>
<td>€ 307</td>
<td>€ 19,101 t/m € 19,800</td>
</tr>
<tr>
<td>€ 27,501 t/m € 28,800</td>
<td>€ 514</td>
<td>€ 461</td>
<td>€ 19,801 t/m € 20,800</td>
</tr>
<tr>
<td>€ 28,801 t/m € 32,100</td>
<td>€ 669</td>
<td>€ 616</td>
<td>€ 20,801 t/m € 22,700</td>
</tr>
<tr>
<td>€ 32,101 t/m € 38,000</td>
<td>€ 823</td>
<td>€ 770</td>
<td>€ 22,701 t/m € 26,900</td>
</tr>
</tbody>
</table>

The client’s contribution increased in recent years due to budget cuts. The same cuts have also led to higher client’s contribution in case of certificates concerning divorce. For these separation-related certificates the following client’s contributions apply:

**Table 4  Income and client’s contribution for divorce-related certificates, from 01-01-2018**

<table>
<thead>
<tr>
<th>Taxable annual income:</th>
<th>Client’s contribution</th>
<th>Taxable annual income:</th>
<th>Single</th>
</tr>
</thead>
<tbody>
<tr>
<td>married/single with child(ren)</td>
<td>Without discount</td>
<td>With discount</td>
<td></td>
</tr>
<tr>
<td>≤ € 26,500</td>
<td>€ 340</td>
<td>€ 287</td>
<td>€ ≤ 19,100</td>
</tr>
<tr>
<td>€ 26,501 t/m €27,500</td>
<td>€ 412</td>
<td>€ 359</td>
<td>€ 19,101 t/m € 19,800</td>
</tr>
<tr>
<td>€ 27,501 t/m € 28,800</td>
<td>€ 566</td>
<td>€ 513</td>
<td>€ 19,801 t/m € 20,800</td>
</tr>
<tr>
<td>€ 28,801 t/m € 32,100</td>
<td>€ 720</td>
<td>€ 667</td>
<td>€ 20,801 t/m € 22,700</td>
</tr>
<tr>
<td>€ 32,101 t/m € 38,000</td>
<td>€ 849</td>
<td>€ 796</td>
<td>€ 22,701 t/m € 26,900</td>
</tr>
</tbody>
</table>
Sometimes clients are exempted from individual contributions. This applies to all cases where people have been deprived of their freedom against their will. ‘Have-nots’ are also exempted from paying an individual contribution as well as victims of violent crime and sexual offenses.

In approximately 90% of the certificates granted, the person seeking justice falls under the lowest individual contribution category.

It is also possible to apply for a mediation certificate. This allows a client to call in assistance of an independent mediator, so as to help him to settle a conflict between himself and another party. To stimulate the use of mediation, the client’s contribution towards the costs of mediation is generally less than that of regular legal aid by a lawyer. In 2018 the contribution for mediation was set at a maximum of € 105.

In case of relatively simple legal problems, private lawyers can charge a standard three-hour legal advice fee, of which the client contributes € 77 or € 129, depending on his income (see Table 5). This is called a minor aid certificate.

**Table 5  Client’s income and contribution towards a minor aid certificate, from 01-01-2018**

<table>
<thead>
<tr>
<th>Taxable annual income: married/single with child(ren)</th>
<th>Client’s contribution to legal aid; max. 3 hours</th>
<th>Taxable annual income: single</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ € 27,500</td>
<td>€ 77</td>
<td>≤ € 19,800</td>
</tr>
<tr>
<td>€ 27,501 t/m € 38,000</td>
<td>€ 129</td>
<td>€ 19,801 t/m € 26,900</td>
</tr>
</tbody>
</table>
Certificates: facts and figures
In 2018 407,000 legal aid certificates were issued. Since 2000 the number of certificates has risen by 39%. An upward trend was visible until 2012. Since 2013 the number of certificates issued shows a decline. Whether this is due to the cutbacks in the system is not known with certainty, although it seems reasonable to believe this. Also, what needs to be mentioned is that part of the certificates is not influenced by cutbacks because they are dependent on societal influences, like asylum seekers.

Figure 5 shows the number of certificates issued since 2000.

In addition to regular legal aid certificates – 381,597 in 2018 – 8,351 ‘minor aid’ certificates (i.e. for max. three-hour legal aid) have been issued as well as 17,215 mediation certificates.

For every certificate issued, the LAB registrates the (major) field of law the certificate is concerned with (table 6). This table shows that approximately half of the certificates concern criminal (30%) and family-related cases (23%).
Table 6  Types of cases represented in legal aid certificates (2018)

<table>
<thead>
<tr>
<th>Types of Cases</th>
<th>Number 2018</th>
<th>Percentage 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal</td>
<td>114,000</td>
<td>30</td>
</tr>
<tr>
<td>Family</td>
<td>87,500</td>
<td>23</td>
</tr>
<tr>
<td>Asylum</td>
<td>33,000</td>
<td>9</td>
</tr>
<tr>
<td>Psychiatric Hospitals (Compulsory Admissions) Act</td>
<td>29,000</td>
<td>8</td>
</tr>
<tr>
<td>Contract/consumer</td>
<td>23,000</td>
<td>6</td>
</tr>
<tr>
<td>Social benefits</td>
<td>19,500</td>
<td>5</td>
</tr>
<tr>
<td>Immigration</td>
<td>19,500</td>
<td>5</td>
</tr>
<tr>
<td>Housing</td>
<td>11,500</td>
<td>3</td>
</tr>
<tr>
<td>Labour/employment</td>
<td>11,500</td>
<td>3</td>
</tr>
<tr>
<td>Social (security) insurance</td>
<td>10,000</td>
<td>3</td>
</tr>
<tr>
<td>Administrative</td>
<td>9,500</td>
<td>3</td>
</tr>
<tr>
<td>Pre-deportation detention</td>
<td>8,000</td>
<td>2</td>
</tr>
<tr>
<td>Other civil cases</td>
<td>5,000</td>
<td>1</td>
</tr>
<tr>
<td>Debt restructuring</td>
<td>3,000</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total regular legal aid certificates</strong></td>
<td><strong>381,500</strong></td>
<td><strong>100</strong></td>
</tr>
<tr>
<td>Mediation certificates</td>
<td><strong>17,000</strong></td>
<td></td>
</tr>
<tr>
<td>Minor aid certificates</td>
<td><strong>8,500</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>407,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Multiple use**

Between 2000 and 2018 the average number of certificates issued per client per year increased from 1.33 to 1.49; this is an increase of 12%. However, since 2014 (average 1.55 certificates issued per client) this number has decreased. In 2000, as many as 78% of the clients had one certificate for legal aid, while in 2018 this had dropped to 73%.

Types of cases that occur relatively often with multiple users with more than ten certificates concern administrative law, social security benefits, disputes/complaints detainees, detention of aliens and immigration and asylum law.
Duty lawyers
Besides certificates, the LAB also provides duty lawyers. Each criminal suspect, alien or psychiatric patient who has been lawfully deprived of his liberty against his will is visited by a subsidised lawyer. The availability of lawyers is provided for through the duty solicitor scheme. Lawyers are scheduled according to a rotation system, so that a lawyer will always be available. In 2018, legal aid provision through duty lawyers took place 103,586 times.

Table 7 Legal aid various duty lawyers in 2018

<table>
<thead>
<tr>
<th>Kind of duty lawyer</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal, incl. juvenile</td>
<td>91,500</td>
</tr>
<tr>
<td>Psychiatric</td>
<td>8,500</td>
</tr>
<tr>
<td>Asylum</td>
<td>3,500</td>
</tr>
<tr>
<td>Total</td>
<td>103,500</td>
</tr>
</tbody>
</table>

Compared to 2009, this type of legal aid increased by 16% in 2018. The reason for this rise lies in the procedural adjustments following the Salduz case. Following this judgment of the European Court in 2009, suspects will be entitled, prior to their questioning by the police, to consult a lawyer.
Private lawyers and mediators working within the legal aid system

Legal aid in the Netherlands is usually provided by private lawyers/law firms that provide legal advice and represent clients in cases that deal with the major fields of legal aid: criminal, family, labour/employment, housing, social security, consumer, administrative, asylum and immigration. Private lawyers obtain legal aid cases in two ways: either one of the LSC refers a client to a lawyer, or a client contacts a registered lawyer on his own accord. In the latter case the lawyer will have to refer a client ‘back’ to the LSC to give them the opportunity to solve the problem and in order to qualify for a discount in the individual contribution, if a certificate for legal aid is needed.

To be entitled to accept legal aid cases, private lawyers need to be registered with the LAB and to comply with a set of quality standards. These standards are set by the Bar. For some fields of law – criminal, mental health, asylum and immigration law, youth, family law, victims of crime – additional terms apply. The lawyer must both have adequate expertise and sufficient experience in that particular field.

Payment of lawyers and mediators
As soon as a case is closed, the lawyer bills the LAB for the services provided. A lawyer does not charge for hours but works for a fixed fee which differs according to different types of cases. These fees are based on extensive analyses of legal aid cases from the past and are supposed to correspond with the average time spent on a specific kind of case by a lawyer.6 A few examples are presented in Table 11. In cases that concern labour (dismissal), for example, lawyers will be paid 11 hours.

6 Recently, these analyses have been repeated by a commission (Commission Van der Meer). This commission has indicated that the average time spent on cases does not correspond anymore with the fees that are paid to lawyers, because cases became more complex over the years.
Table 8  Examples of types of cases and the corresponding fixed number of paid working hours

<table>
<thead>
<tr>
<th>Type of case</th>
<th>Fixed number of paid working hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour: dismissal</td>
<td>11</td>
</tr>
<tr>
<td>Divorce</td>
<td>10</td>
</tr>
<tr>
<td>Asylum</td>
<td>4</td>
</tr>
<tr>
<td>Felony</td>
<td>6/8</td>
</tr>
<tr>
<td>Criminal offence</td>
<td>5</td>
</tr>
</tbody>
</table>

In 1994 the hourly legal aid rate was € 26. In 2000 and 2002, fees have been raised substantially, because lawyers operating within the legal aid system were relatively underpaid. Since then, the Ministry determines the hourly rate every year following an annual price index. In 2016 the hourly rate was nearly € 106. This means that for each labour-dismissal case a lawyer is paid 11 times € 106 for legal aid. Previously this hourly wage was indexed every year. However, because of budget cuts, this amount has been reduced several times in recent years. From 2012 until 2018, the hourly wage was around € 106. In 2019 it was increased to € 108.57.

Part of this fixed fee is paid by the client through the individual contribution; lawyers are responsible for collecting this contribution themselves. The remainder of the bill is paid by the LAB (see figure 6).

Figure 6  Schematic representation of the payment of the lawyer’s bill

Payment to lawyer:
Labour – dismissal
11 hours (11 x € 109) **€ 1199**

Client’s contribution:
(for example) **€ 143** if client falls within the lowest individual contribution category

Legal Aid Board
Pays **€ 1056**
(€ 1199 - € 143)
**Number of lawyers and mediators**

In 2018, as many as 7,700 lawyers and mediators provided legal aid in at least one case. This number shows a decline in the last couple of years.

In 2018, 40% of all Bar-members work within the legal aid system.

**Figure 7  Number of legal aid lawyers (2000 – 2018)**

The number of mediators has increased – by 215% – compared to 2007. In 2018, 1,002 mediators applied for a mediation certificate on behalf of their client(s). Often, the mediators working in the system also practise as lawyers.

Compared to 2000, the average number of certificates per lawyer has risen by 25%, from 44 to 55 certificates per year in 2018.

The lawyers are quite loyal to the legal aid system. Figures indicate that the vast majority of legal aid lawyers (96%) remain active within the system for at least 5 consecutive years.
5 Users of the legal aid system

Number of clients of the Legal Services Counters
In 2018 the LSC served approximately 400,000 clients.
The website of the LSC was visited by 2.6 million persons in 2018.

Background characteristics of clients of the Legal Services Counter
Since we have the BSN of many clients of the LSC, we are able to
identify the background characteristics of the clients of the LSC.
Compared to the average Dutch citizen, the average client of the LSC
is more likely to be female, more likely to be between 25 and 55 years
old, more likely to be a member of a non-Western ethnic minority group
and more likely to be citizens of larger municipalities/(highly) urbanised
areas. They are less likely to be married/more likely to be divorced
and more likely to belong to a single person household or single parent
family household. They are relatively often recipients of social benefits
and less often pension recipients.

Number of legal aid applicants
Compared to 2000, last year (2018) showed an increase by 24% of the
number of applicants that were granted at least one certificate per year.
In 2018 more than 273,000 clients received a certificate.

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

Holders of a legal aid certificate are predominantly male and between
20 and 55 years of age; certificate holders of over 65 are fairly
infrequent. Employed and retired workers are found to be fairly
underrepresented, whereas recipients of social benefits and other
nonworking persons are overrepresented.
Certificate holders are also found to be more often divorced and less often married and certificate holders living in single-parent families are overrepresented. Furthermore, certificate holders are more likely to be members of non-western ethnic minority groups and live mainly in cities of over 250,000 residents and less often in cities under 50,000 residents.

**Client satisfaction**
Customer surveys in the past have shown that, in general, clients rate the services of the LSC as (very) good, with an average score of 7.8. Moreover, customers can find and reach the LSC easily.

The services of the legal aid lawyers are also rated as (very) good, although it depends on the field of law. Holders of a legal aid certificate in criminal cases rate the services of their lawyers higher (with an average score of 8.3) than certificate holders in other than criminal cases (with an average score of 7.7). Only 15% of all certificate holders finds it (very) difficult to find a suitable lawyer or mediator.
6 Developments following cutbacks in the system

Compared to 2000, public expenditure on legal aid was increasing over the years. Therefore, in 2008, the government decided to cut the budget for legal aid by 50 million euros, both in 2008 as well as in 2010. Several measures were implemented, like stimulating alternative ways of dispute settlement. Mediation and the ‘Roadmap to Justice’ (Rechtwijzer) were steps in that direction.

The financial pressure on the system has increased even more due to the legal precedent that was set following the Salduz case. Following this judgment of the European Court in 2009, suspects will be entitled, prior to their questioning by the police, to consult a lawyer. Consultation and assistance during interrogation by a lawyer is free of charge in most cases, but as a result the own contributions clients have to pay were increased, with even higher adjustments in divorce cases in which the spouses did not choose to divorce via mediation.

In 2011, the State Secretary for Security and Justice announced that the system of legal aid needed to be reviewed in due course. Therefore a policy was developed that should result in structural savings of 85 million euros annually. Several measures took effect in 2015, like the temporarily reduction of the hourly legal aid rate paid to lawyers. However, most cutbacks have been suspended because the Senate filed a number of motions in 2015. A commission was established that issued an opinion after extensive research.

In November 2015 the Wolfsen Committee submitted a report to the Dutch Minister of Security and Justice entitled ‘Reassessing Legal Aid Towards a Durable System for Legal Aid’. The Wolfsen Committee suggested to organise the system in another way. These proposals focused on strengthening the first-line legal aid, increasing the quality of legal aid, a more bundled and multidisciplinary approach to legal problems, and investigating a possible increase in lawyers’ fees.
Subsequently the Committee Van der Meer investigated the adequacy of the regulation lawyers’ fees within the legal aid system. In October 2017, this committee announced its findings on the basis of a detailed time registration study. They came to the conclusion that there is serious backlog in the system, as lawyers in almost all areas of justice and types of cases spend on average much more time than they are reimbursed. In order to be able to bring up to date the current fixed fees, which are based on an approximately twenty-year-old time registration study by the committee Maan, the annual budget for the legal aid system should be increased by approximately € 125 million. However, that outcome did not fall within the precondition of budget neutrality that the Committee had been given.

In a letter to the House of Representatives in November 2018, the Minister for Legal Protection described the outlines for a new system of legal aid. The outlines are mainly based on information that the Minister has gained during a number of design sessions in 2018 with organizations that play a role in and around the system of legal aid. When designing the outlines, the precondition was that a new system should not lead to higher costs.

The Minister describes in his letter five main outlines for a new legal aid system:

- More accessible advice and information must become available to everyone, regardless of income;
- More triage at the front, so that clarity is quickly established about the best solution route for the person seeking justice and whether or not a case is eligible for legal aid; the best solution route for the problem can also be a route without legal assistance;
- More control over costs and quality, through the introduction of legal aid packages that should lead to fewer legal proceedings before the courts and a solution to handling a problem for an integral price;
• A new arrangement of clients’ contribution, whereby the clients’ contribution will amount to a percentage of the costs of the legal aid package;

• Realization of a better compensation scheme for the hours worked by the lawyers, by reducing the number of certificates, with which the Minister wishes to meet the conclusion of the committee Van der Meer that the lawyers’ fees are currently below par.

In January 2019, the House of Representatives approved a phased elaboration of the outlines via experiments. The elaboration must ultimately be submitted to the House for approval through drafting of regulations.
More information can be found on the website of the Dutch Legal Aid Board: www.rvr.org

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