

INFORMATION NOTE

Free legal advice services in the Netherlands

1. Introduction

1.1 This information note provides members of the Panel on Administration of Justice and Legal Services with information on the legal aid system and free legal advice services in the Netherlands. It briefly introduces the legal aid system, free legal advice services, parliamentary scrutiny on the provision of legal aid, major relevant agencies, and latest development of the legal aid system.

2. Legal aid system

Legal Aid Board

2.1 Since 1994, legal aid in the Netherlands has been governed by the *Legal Aid Act*. The *Act* has replaced the prior statutory system which dated back to as far as 1956 as the basis for the supply of legal aid. The legal aid system is administered, supervised, and implemented by the *Raad voor Rechtsbijstand* (Legal Aid Board, "LAB"), an independent administrative body under the competence of the Ministry of Security and Justice ("MoS&J").

Scope

2.2 The legal aid system is two-fold, encompassing the primary free legal advice and information service provided by frontline *Juridisch Loket* (Legal Services Counters, "Counters"), and private secondary help provided by lawyers and mediators. The legal aid system in the Netherlands therefore is a mixed model, consisting of public first-line and private second-line help.

Primary service: Legal Services Counters

2.3 Funded by LAB, the Counters are responsible for offering general information concerning rules and regulations as well as legal procedures for the general public. The services are free of charge and can be accessed by telephone, email or in person. Consultation for a maximum of an hour may be provided when necessary. Staff of the Counters give advice on simple legal matters, and refer clients to private lawyers or mediators if their problems turn out to be complicated or time-consuming.

Secondary service: Service from private lawyers and mediators

2.4 Under the legal aid system, private lawyers provide legal advice and represent clients in cases concerning criminal, family, labour/employment, housing, social security, consumer, administrative, asylum and immigration law. They receive legal aid cases either from the Counters' referral or clients' direct contact.

2.5 Initial legal advice (*lichte advies toevoeging*) can be provided in a three-hour (maximum) session, and when necessary, extended assistance will be given depending on the nature of the case. Clients in receipt of these services should meet the requirements for legal aid. For extended assistance, the lawyer concerned needs to submit an application on behalf of the client to LAB for a so-called "certificate", which is a statement to verify that the client is entitled to legal aid. From April 2005 onwards, people in need can also apply for a mediation certificate by which they can seek help from an independent mediator with legal aid.

Service providers

2.6 All lawyers and mediators providing legal aid services must register with LAB and comply with quality standards collectively set out by LAB, the Dutch Bar Association and MoS&J.¹ Their work is in general paid at a fixed fee in respect of the type of services and the average working hours of that service provided.

¹ The quality criteria for mediators have been adopted in consultation between the Netherlands Mediation Institute, the Council for the Judiciary and the Legal Aid Board.

Eligibility

2.7 While the primary legal aid service is free of charge, the secondary service is subject to eligibility testing. LAB will assess an application in terms of the client's means, merits and significance of the legal problem in question to consider granting of legal aid. Even when legal aid is granted, successful applicants have to pay a standard fee for each case so as to encourage them to carefully weigh the pros and cons of taking a matter to court, and hence discouraging frivolous cases.

Client's contribution

2.8 For simple legal problems, private lawyers are allowed to charge a standard three-hour legal advice fee, of which the eligible client needs to contribute €40 (HK\$452) or €75 (HK\$848).

2.9 An applicant's contribution for extended legal assistance is currently between €125 (HK\$1,413) and €775 (HK\$8,758). The applicant can have a €50 discount if he first seeks help from the Counters, which analyse the case and refer it to appropriate bodies when necessary. Such discount will be offered automatically for cases of criminal, asylum, appeal and administrative sanction, even when they are not referred by the Counters. In addition, applicants who are to be summoned in a short time or of limited mobility can also enjoy the discount. People in custody or otherwise being deprived of freedom are exempted from making the contribution.

2.10 For mediation services, an applicant's contribution level is generally less than that for extended legal assistance. At present, such fee is set to be either €50 (HK\$565) or €101 (HK\$1,141).

2.11 If a client is in need of a second certificate within six months, his fee will be reduced by 50%, and this reduction applies to a maximum of three certificates within six months.

Means test

2.12 The eligibility for legal aid is based on both the applicant's taxable annual income and capital asset two years prior to the year of application ("t-2")². The annual income limit for year 2011 is €24,600 (HK\$277,980) for single applicants and €34,700 (HK\$392,110) for married couples, single parents and registered partners or cohabitants. The capital limit is set at €20,661 (HK\$233,469) with a child allowance of €2,762 (HK\$31,211) for each child under 18, and a special additional allowance will be granted for applicants aged 65 or above. It is estimated that 37% of the Dutch population qualify for legal aid.

Merits and significance of the case

2.13 In granting legal aid, LAB also assesses whether there are sufficient reasons backing up the application, such as:

- (a) the problem cannot be resolved without legal assistance or mediation;
- (b) the case involves the applicant or his minor child;
- (c) the case is an interest of the Dutch court and Dutch law; and
- (d) the case must be of financial interest of at least €250 (HK\$2,825) for initial legal service and €500 (HK\$5,650) for other assistance.

Funding

2.14 The legal aid system is financed by MoS&J, and LAB is responsible for its budgetary allocations and matters concerning supply of and demand for legal aid. Only a small part of the actual expenses are covered by clients' contribution. The total public expenditure on legal aid was €475 million (HK\$5,368 million) in 2010.

² For an application in 2011, the tax information at t-2 to be provided is that of year 2009.

3. Free legal advice services

Legal Services Counters

3.1 The Counters are meant to serve two major goals: firstly, providing readily available and free of charge legal services, and secondly, tackling disputes and legal problems at an early stage and thus minimizing costs, both for the individuals and for society at large.

3.2 In receipt of an enquiry, staff of the Counters will first clarify the nature of the problems, and advise on simple legal matters concerning civil, administrative, criminal and immigration law. Information on the chance of success, and time and costs needed for subsequent procedures will be provided to the client.

3.3 If the case requires an in-depth help by a professional and if the client decides to proceed on the case, the Counters staff will refer the case to a private lawyer or a mediator. As aforementioned, the client is required to pay a contribution towards the costs of legal assistance provided by the private sector.

Conflict Resolution Guide

3.4 In addition to the Counters, there is an online Conflict Resolution Guide ("CRG") system which forms a key component in the development of the self-help concept, i.e. citizens to resolve their own legal problems. Jointly developed by LAB and Tilburg University, CRG, also known as Roadmap to Justice (Rechtwijzer), is an interactive online application system specifically providing assistance to settle disputes. It provides citizens with customised information in the event of disputes in various areas, including consumer affairs, housing, family, work and government. It helps the users understand more about their problems and provides possible solutions to the disputed matters.

3.5 The functions of CRG are:

- (a) to assess the causes and nature of the users' problems and their relationship with the other party;
- (b) to identify the outcomes for other people faced with similar problems, thus to give the users an idea what they can expect in a particular case;
- (c) to identify possible solutions to the problem; and
- (d) to find out the best way by which the dispute may be effectively and efficiently resolved.

3.6 LAB aims at expanding CRG by introducing new services for citizens, and the services already added or being developed are:

- (a) divorce and parenting plan module, which is an online aid for couples wishing to arrange divorce to be aware of the consequences of the divorce, and enables them to make agreements and arrangements on relevant aspects;
- (b) mediation online platform, which prevents arguments and emotional scenes that may occur in face-to-face mediation meetings, and helps strengthen the position of the weaker party;
- (c) aftercare webpage, which provides information about issues that divorced parties may encounter with the emphasis on parents communication; and
- (d) dispute resolving tool, which is a tool under development to help identify objective criteria in a dispute and resolve the dispute.

4. Parliamentary scrutiny on the provision of legal aid

4.1 In the Netherlands, Ministers are collectively accountable to the Parliament for their actions when carrying out their duties. In the House of Representatives, in principle, there is a standing committee for every ministry. The Minister and State Secretary who are responsible for a particular policy area often address the committee meetings regarding related policies and bills.

4.2 Being financed by MoS&J, LAB is accountable to this ministry for its budgetary allocations. MoS&J monitors the work of LAB and makes sure that every Dutch citizen can have access to justice. The Standing Committee of Security and Justice of the House of Representatives is responsible for dealing with the matters relating to MoS&J. The Minister or State Secretary of Security and Justice may be called upon to attend the committee meeting to answer questions.

5. Major relevant agencies

Legal Aid Board

5.1 LAB consists of five regional offices and one central office. It is entrusted with all matters concerning administration, supervision and implementation of the legal aid system. Its work 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. It also advises MoS&J on matters concerning the supply of and demand for legal aid. However, legal aid services are provided by private lawyers and mediators as LAB does not directly employ lawyers or mediators.

Legal Services Counters

5.2 There are 30 offices of the Counters across the country with its headquarters located in Utrecht. Their location is evenly distributed on a geographical basis, so that every Dutch citizen is within easy reach of a Counter, at an approximately one-hour journey by public transport. In general, each Counter is staffed with at least six legal advisers. Since the services of the Counters do not cover extensive legal aid and representation in court, paralegals may serve as advisers. The Counters are equipped with computer terminals for clients to look up references to documentation on a wide range of legal topics. The Counters have set up both a call centre and a website, which facilitates users' access to various documentations and information of different legal matters.

Sociaal Raadsliedenwerk (Social work counsels)

5.3 Social work counsels are social entrepreneurs partially funded by the municipalities to serve citizens in the community. Social work counsels provide free advice and information on a wide range of socio-legal aspects, including benefits, taxes, housing, employment, education, consumer affairs and people's rights against the government. Social work counsels also help people filling up forms, drafting letters and submitting complaints or appeals. Their emphasis is on serving the most vulnerable citizens, and thus a low threshold has been set up to determine the target group which could access their free services. There is a national organization of social work counsels with approximately 80 offices across the Netherlands.

Rechtswinkel (Legal advice centres)

5.4 *Rechtswinkel* is a voluntary organization that provides free legal aid. Many municipalities across the Netherlands have *Rechtswinkel*. The *Rechtswinkel* in Tilburg is the oldest and also one of the largest. *Rechtswinkel* is staffed by volunteers, often law students. Its front office provides free advice on any type of legal question. It provides the necessary information, and may refer the client to someone who can help. Its back office helps with more complicated cases which only cover labour law, rental law, social security and consumer problems. On behalf of its clients, it may write letters to and negotiate with the opposite party, and go to court if necessary. People can get advice from *Rechtswinkel* by phone or in person.

6. Latest development

Provision of legal advice at police stations

6.1 Following the ruling of the European Court of Human Rights on the *Salduz v. Turkey* case in November 2008³ and the ruling of the Supreme Court of the Netherlands on 30 June 2009⁴, relevant law was amended in April 2010 to enforce the provision of a 30-minute lawyer consultation for an adult suspect before the first police interrogation, and a pre-interrogation consultation and the presence of a lawyer during the interrogation of juveniles. Such legal services are provided free of charge⁵.

6.2 The aforementioned service, also known as "Salduz assistance", is provided by individual lawyers and is managed by LAB. LAB keeps the list of lawyers who have signed up for the provision of Salduz assistance. It runs a roster of on-duty lawyers and a referral service which receives calls from the police and refers lawyers.

6.3 In April 2011, MoS&J put forward a consultation proposal to give crime suspects the right to legal assistance during police questioning if such crime carries a prison sentence for six years or more. Under the proposal, the police may refuse such arrangement if this is necessary in the interests of the investigation, with such interview to be recorded instead.

³ In the *Salduz v. Turkey* case, the European Court of Human Rights found that "in order for the right to a fair trial to remain sufficiently "practical and effective"", Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms required that "as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right." "The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."

⁴ The Supreme Court of the Netherlands ruled on 30 June 2009 that a suspect had the right to consult a lawyer before the first police interrogation, but only a juvenile suspect had the right to have a lawyer in presence during police interrogation as well.

⁵ If the case is less serious and does not involve imprisonment, the suspect needs to pay for the service.

Budget cut and self-help

6.4 In 2008, the government ordered to cut the annual costs of legal aid by €50 million (HK\$565 million) from 2009 onwards. To meet the budget cut target and improve the legal aid system, the government believes that citizens should be given greater responsibility for resolving their own legal problems. Accordingly, LAB targets to promote such self-help concept by expanding the functions of CRG and strengthening the role of the Counters.

6.5 To encourage the public to use the Counters' services instead of directly seeking help from private lawyers with legal aid, LAB has also started to offer a €50 (HK\$565) deduction on users' fee if they first seek help from the Counters since 1 July 2011.⁶ It is estimated that about a quarter of over 400 000 cases currently received by a lawyer will be handled by the Counters first, and approximately one-tenth of such cases can be resolved at the primary stage.⁷

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⁶ The fee scale for extended legal service has also been increased starting from 1 July 2011.

⁷ Based on this estimation, the clients of about 90 000 cases will be offered a discount on their legal aid contribution when using relevant services.

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