

The Netherlands: Raad vor Rechtsbijstand (RVR)

17,181,000 inhabitants (2018)

GDP: \$810 billion, \$49,760 per capita (2018)

The percentage of households living below the poverty line was 8.2% in 2017

Number of practising lawyers in the jurisdiction: 17,784 (01-01-2019)

Number of practising lawyers in legal aid: 7,072 (2018)

Summary of the operation of legal aid

The Netherlands operates a mixed model of legal aid, which covers both criminal and civil law. The Netherlands has a strong ethos of using advice, supported self-help and, recently, mediation, to resolve problems at an earlier stage. 'First line' legal aid is provided for free, through legal services counters (LSCs), including face to face and telephone support, as well as a triage service, which may be used to refer to a lawyer or mediation. LSC staff cannot act for clients, but they offer information on legislation and legal procedures, as well as giving advice. Representation and more complex advice are delivered by private practice lawyers. 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.

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.

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

The Netherlands has a relatively high legal aid budget. According to the European Commission for the Efficiency of Justice (CEPEJ)¹ expenditure on legal aid in Q1 of 2016 was €27.42 per inhabitant (fourth highest, behind Sweden, England & Wales and Scotland). The legal aid budget is not capped. For instance in 2016 the approved budget was €440 million, but the implemented budget was €468 million. The use of legal services counters, to triage and find alternative paths to resolution, appear to have been used to manage expenditure. However, there are signs of strain. In 2008 and again in 2010, the Parliament of the Netherlands 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.

¹ 'European Judicial Systems: efficiency and quality of justice' Figure 2.43, European Commission, 2018.

Once the LSC have identified that a client should be referred there are three options for referral:

- Regular legal aid (94% of referrals in 2016);
- Minor legal aid (2%)
- Mediation (4%).

For regular legal aid, the RVR's payment model is 'inclusive fee', with different types of case allocated a different number of hours. For instance 'divorce' is allocated 10 hours, and 'criminal offence' 5 hours. The hourly rate is around €106

Fee rates are set in legislation (a 'decision', broadly similar to secondary legislation). The 2015 revision of the 'decision on remuneration for legal assistance' noted that the, then, current fee rate (€ 105.61) should not be updated before 2019. This provision was removed in the 2019 revision. The number of 'hours' for different types of case is also set out in this decision. . For complex / time consuming cases lawyers can apply for an additional fee.

For minor legal aid, lawyers receive a three hour fee, minus the client contribution if applicable.

What is the relationship between the legal aid body and the solicitor?

Legal aid lawyers register with the RVR, and have to comply with a set of quality standards. For some fields of law additional standards apply.

In 2016, 42% of lawyers working in the Netherlands were on the legal aid register. Lawyers who wish to register must comply with a set of standards set by the Netherlands Bar association (Nederlandse orde van advocaten – NOVA). 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.

All lawyers are registered with NOVA, and there are provisions for any lawyer to be obliged to undertake work (including legally aided) if an individual with a

legitimate problem cannot find anyone to assist them, or the RVR deems it necessary².

Clients can approach a lawyer directly, however if they want legal aid the lawyer is encouraged to refer a client back to the LSC to give them the opportunity to solve the problem. If the LSC agree that the client needs a legal aid lawyer then they will refer them on. Software that was specifically designed for this purpose helps the Counter's staff to evenly distribute referrals among the lawyers available for referral. Those who have been referred by the LSC to a lawyer, or mediator, receive a discount on their financial contribution.

The RVR operates a 'high trust' scheme with some lawyers (in 2016 77% of all certificates granted were to firms operating High Trust), emphasising transparency, trust and mutual understanding. The scheme involves greater compliance on the part of the legal profession, in return for less bureaucracy and quicker processing times. There are two High Trust schemes, differentiated by how claims for payment are assessed by the RVR (either 'sample' or 'case by case').

Who pays?

Those involved in the case.

The majority of those receiving regular legal aid pay a contribution towards their costs, this ranges from €143 to €849 (divorce cases attract a somewhat higher contribution than others). Even those on low incomes will potentially be assessed with a contribution; the lowest contributory band is "≤ € 18.400 [taxable annual income]". Clients who are referred to a lawyer by the LSC are given a reduction on their contribution.

Those who do not pay a contribution are identified by case type, as well as financial circumstances. They include: victims of violent crime, those who are indigent and those who have been deprived of their freedom. Until recently the contribution was collected by the lawyer. This was often not collected, leading to reduced income for legal aid lawyers. The RVR has recently elected

² "A litigant who is unable to find an advocate willing to offer his services for a case that prescribes representation by an advocate or in which legal aid can only be provided by an advocate, or who is unable to find an advocate in time, can turn to the President of the Local Bar where the case shall be heard, with the request to appoint an advocate. The appointed advocate is obliged to offer his services" - Advocatenwet 1952, 2016 revisions (*The Lawyers Act*) Section 13 paragraphs 1 and 4, and "In special cases, the board may decide that legal aid will be provided by a non-registered lawyer". Legal Aid Act, Article 16.

to collect contributions directly from clients. For 'minor aid', clients pay a contribution of either €77 or €129. Mediation has a maximum contribution of €105.

For all types of legal aid the RVR, not lawyers, is responsible for assessing financial eligibility. Compared with Scotland this is simple since this information is held centrally (for the majority of applicants). The RVR only has to verify the client's personal data with that in the municipal population register and check the applicant's income and assets with the tax authorities.

Legal Expenses insurance (LEI).

Around 42% of households in the Netherlands have LEI (often included as part of household insurance). This may fund legal cases for some clients who would otherwise be funded by legal aid.

The taxpayer.

The remainder of the legal aid bill is paid by revenue raised from taxes.

When are providers paid?

As soon as a case is closed, the lawyer bills the RVR 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 were 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.

<i>Examples of types of cases and the corresponding fixed number of paid working hours</i>	<i>Type of case</i>	<i>Fixed number of paid working hours</i>
Labour: dismissal		11
Divorce		10
Asylum		4/12
Felony		6/8
Minor criminal offence		5

Lawyers are asked to provide the actual hours worked, as well as hours claimed (ie those allowed for legal aid in the case type).

Advance payments for civil legal aid are possible.

How are the payment mechanisms defined and controlled? The RVR has very similar levels of responsibility to SLAB. They administer the legal aid fund – including checking solicitor accounts and making payments. They also assess financial eligibility (of all applicants, unlike SLAB), collect client contributions and assess the merits of the case (unless the client is not referred through the LSC). The RVR also match the availability of legal experts with the demand for legal aid, and undertake supervision and quality control of the actual services provided.

How are disputes on payment adjudicated?

This appears to be set out in legislation, and is applicable to all Dutch lawyers, whether legally aided or not.

The ‘Act on Advocates’ stipulates “compulsory participation in a complaints and disputes scheme”. Whilst the civil code of procedure [*Wetboek van Burgerlijke Rechtsvordering*] references “a settlement agreement within the meaning of Section 900, Book 7 of the Civil Code [*Burgerlijk Wetboek*], on the basis of which disputes about the extent of a fee statement are settled”.

Commentary.

The legal aid system in the Netherlands is currently under review. There have been three committees set up in the past 10 years to look at legal aid, the most recent being the Van der Meer Committee, which published findings and conclusions in October 2017. Press reports on the findings of the Van der Meer report note that: fees for legal aid professionals are no longer up to date; expenditure on the legal aid system should be increased, and that there should be an overhaul of the system. A new legal aid system bill is still being debated. In March 2019 it was reported that there is opposition (from lawyers and political opponents) to the Government’s plans³, and that the plans will not help ensure lawyers are properly paid. The plans include:

- Freeze the legal aid budget at €400m a year,

³ <https://www.dutchnews.nl/news/2019/01/opposition-slam-legal-aid-shake-up-gatekeeper-plan-a-fail/>

- Pay people (including lawyers) for ‘solving a situation’ (an ‘integrated solution’⁴),
- Establish an independent agency to decide if cases should be eligible for legal aid,
- Use arbitration more frequently to resolve work conflicts, divorce and tenancy disagreements.

There do not appear to have been any formal evaluations of the High Trust system, and it was mentioned only briefly in the Van der Meer Committee report. The proposals for the new system (mentioned above) appear to be to remove High Trust. The rationale is that “this form of post control does not sufficiently address the question of whether [a legal aid certificate] provides the most effective and efficient solution to a dispute”, in other words, it may not lead to the ‘integrated solution’ mentioned above.

⁴ “The system focuses too narrowly on the legal handling of questions people have about their problems, often by adding a lawyer. The future system will focus on the sustainable resolution of problems by focusing on underlying causes and better cooperation between different, including non-legal, aid workers. That goes far beyond mere efforts for early dispute resolution and is the most important reason that I do not choose a better hourly rate for the current rechtsbijstandverleners [legal aid lawyers]” – translation from the report of the written consultation [on legal aid]– Dutch parliament 18 Jan 2019.

¹ 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.