

## Summary

### **In need of legal assistance?**

The Court of Audit (AR) recommended that the Ministry of Security and Justice provides a better understanding of non-use of subsidized Legal Aid. According to the AR non-users are people "who meet the criteria for Legal Aid (low income, little or no property, legal problem), did not use it, whereas they needed it." In response, the Minister of Security and Justice replied, this research question, among others, will be included in the study 'the Geschilbeslechtingdelta'.

### **Research objectives and research questions**

The aim of this study is to provide insight into the (non-)use of legal assistance. The question of the AR has been broadened in a number of respects. Firstly, the use of legal assistance among all income groups has been mapped and is not limited to the use by those who meet the criteria of the Legal Aid Act. From a policy point of view, the use of legal assistance of those who are not entitled to legal aid is also relevant. Moreover, this group is a useful frame of reference for the findings with respect to those entitled to subsidized legal aid.

Secondly, others than (subsidized) advocates provide legal assistance too, therefore this study paid attention to various forms of legal assistance. Thirdly, the use of judicial proceedings was included in this study.

The need for legal assistance (wording of the AR), is difficult to determine objectively. The choice whether or not to use legal help is ultimately the choice of the citizens themselves. This research tried to give insight into non-use, by studying (a) the reasons for non-use and (b) the outcome of the approach, and comparing the outcomes of users and non-users. This may give insight into possible barriers which respondents have experienced and whether non-use may have lead to disadvantageous outcomes.

From the literature it is assumed that non-use is associated with certain characteristics of the litigant, such as possession of economic (including income and legal expenses insurance) and social psychological resources (including education and ethnicity). In addition, the use of legal help is linked to certain characteristics of the problem (type, financial interest, seriousness, complexity) and the opposite party (individual, company or government). To better understand the factors associated with the use of legal help and legal procedures, it has been investigated to what extent the use of legal help and proceedings is related to the above problem, respondent and opposite party characteristics.

The research questions are:

- 1 What is the level of non-use, in terms of (a) non-use of legal assistance and (b) non-use of legal procedures? To what extent is this non-use associated with legal aid entitlement and other respondent, problem and opposite party characteristics?
- 2 What reasons do citizens give for non-use?
- 3 What are the outcomes (reaching one's goal, resolving conflict, fairness perception, compliance) and do these outcomes differ between users and non-users? Do these differences continue to exist when controlling for respondent, problem and opposite party characteristics?

## Research method

The data in this study are based on the problem-solving survey of the Dutch Paths-to-justice study, called 'Geschilbeslechtingdelta 2014' (Ter Voert & Klein Haarhuis, forthcoming). The data cover 1,928 respondents aged 18 and older who had a non-trivial problem in the period May 2009 to May 2014.

The classification of 'Legal Aid entitlement' was estimated based on the gross annual income of the household and living arrangements.

The use of legal assistance has been measured in different ways. Firstly, a distinction was made between legal assistance users and non-users. Legal assistance users are respondents who consulted legal experts and organizations such as advocates, legal expenses insurers, social councilors, Legal Services Counters or the union. Second, we studied the use of a particular legal adviser: an advocate, legal expenses insurer or the Legal Services Counter.

The reasons for non-use are checked with respondents who: a) took no action, b) considered a particular legal adviser, without having consulted this advisor c) did not start legal proceedings.

The outcomes respondents achieved were measured on the basis of five indicators: reaching their goal, a closed or resolved problem, a fair agreement or decision and fulfilment of the agreement/decision.

### Extent of use and non-use

Some 63% of all respondents with a problem did not, and 37% did consult a legal adviser in tackling the problem.

Approximately 12% of all respondents with a problem consulted an advocate, 11% a legal expenses insurer and 5% the Legal Services Counter. About 25% of all respondents have considered a certain legal adviser but did not contact the specific advisor.

Finally, 4% of the respondents was involved in court proceedings and 11% in an extrajudicial procedure.

The aforementioned percentages are approximately the same to those entitled to Legal Aid and those who are not. The use of legal assistance in general - and advocates in particular - is mainly related to problem characteristics, such as type and severity of the problem, and virtually not to background characteristics of respondents.

With respect to legal expenses insurance (LEI), there are differences in the degree to which respondents have such an insurance: those entitled to Legal Aid have it less often than those who are not entitled to Legal Aid.

### Reasons for non-use

If respondents a) took no action, b) considered a particular legal adviser, but did not consult, or c) did not start legal proceedings, they were asked why they had not done so. With respect to all three steps the largest group abandoned this approach because it falls into the categories of 'the problem is solved', 'not worth it', or 'unnecessary'

High costs are not often mentioned by respondents who have taken no action (4%) and respondents who did not start a procedure (8%), but more often play a role in not hiring an advocate. Almost half of the respondents who considered an advocate, but did not consult one, decided not to because of the cost. This does not mean that the costs are a serious barrier and that they did need (in terms of the AR) an advocate. The problem might be not that serious or the amount of money at stake

may be low. It appears however, that even when specifically looking at the unsolved problems, who were found seriously and whose financial interest is above the threshold for Legal Aid (€ 250 or € 500), about half of respondents forgoes an advocate because of the cost.

Other potential institutional barriers such as poor accessibility or availability of a legal adviser are rarely mentioned. 'Cost too much time and effort' could refer to a complex legal system. This reason is referred to by 10 to 15% of the respondents. About 5 to 11% of the non-users mentioned socio-psychological barriers, such as 'did not know what to do'. Aspects such as not wanting to harm the relationship with the other party are referred to by '6 to 10% of the respondents.

The above percentages are about equally distributed among those entitled to Legal Aid entitled and those who are not. An exception is the referral to social psychological barriers: Legal Aid entitled call these barriers more often than the non-entitled.

### **Outcomes**

Secondly, it was investigated whether non-use may have lead to disadvantageous outcomes.

Approximately 68% of all respondents achieved his or her main goal; 79% dissolved their problem; 77% experienced the agreement as fair; 72% perceived the decision by an independent third party as fair; and 88% of those agreements or decisions in which a (financial or other) obligation arose, was fulfilled.

The study showed that there were no differences between users and non-users in the results they achieve, and that with respect to some outcomes users achieved even less positive results than non-users. In terms of achieving the main goal, solving the problem and the perceived fairness of the decision, no significant differences were found between users and non-users of legal assistance or procedures, or characteristics of the problem at hand explained away the differences.

Differences between users and non-users were persistent (even after controlling for problem characteristics) with respect to the fulfillment of the agreement/decision and the perceived fairness of the agreement. For users of legal assistance and legal proceedings, agreements/decisions were less often fulfilled than for non-users.

Furthermore, those who contacted an advocate perceived the agreement with the other party to be less fair than those who did not.

These results showed that non-users either achieve equal or even better outcomes than users.

### **Final remarks**

The 'need for legal assistance' is a difficult concept to operationalize. In 'Access to Justice' studies the accent over the years shifted from the 'need for legal assistance' to the 'need for a solution to a problem'. The underlying idea is that citizens who have a problem not necessarily need a lawyer. People want a solution to their problem and the legal route can be one way to achieve this, but not necessarily so. The present study shows that in many cases citizens achieve their goal by themselves or solve the problem without legal advisors. It also appeared that if they have had help from legal advisors, this is no guarantee that they reach their goal or solve their problem. The outcomes of users are no better than those of non-users; in some respects, they are even worse. The study showed that especially problem characteristics – such as the severity, type of problem and the financial interest –

determine what people do and accomplish. In case of difficult problems, people more often contact legal advisors, however, even with the help of advisors, these problems cannot always be solved.

Another finding is that income level and whether or not people are entitled to Legal Aid, make no difference for the use of legal assistance or procedures. Different income groups however, take different paths to justice. Lower income groups are more likely to contact Legal Service Counters. Higher income groups more often have a legal expenses insurance. For the lower income groups, the financial threshold to contact an advocate is in part removed by subsidized Legal Aid. Furthermore, a part of this group has a legal expenses insurance or is a union member. So, for certain types of problems the costs are (partly) covered by the legal expenses insurance, the union, or the employer.

Nevertheless, lower income groups more often refer to socio-psychological barriers like 'not knowing what to do' or 'do not feel comfortable in that world'. And finally, for all income groups the cost of the advocate forms a certain threshold. Citizens generally find advocates too expensive. For nearly for half of those who have considered an advocate, a reason not to contact one is costs.