

# INTERNATIONALE VERKENNING GESUBSIDIEERDE RECHTSBIJSTAND

SEO ECONOMISCH ONDERZOEK

## English summary

*The Dutch system for subsidised legal aid differs from the systems in Finland and Scotland because of, among other things, the separation of primary and secondary legal aid. Legal services counters may be able to reduce costs by having private lawyers provide consultations. Increasing the importance of legal expenses insurance leads to a transferral of public to private costs and may also harm the universal accessibility of legal aid within the Netherlands.*

The Netherlands has a system for subsidised legal aid that is characterised by access through legal services counters and a separation between primary and secondary legal aid. Other countries have established a different structure for the system. Recently, there has been discussion about the need to restructure the system for legal aid in the Netherlands. The Ministry of Security and Justice asked SEO Amsterdam Economics to investigate this matter. To this end, the system of the Netherlands shall be compared to the systems adopted in Finland and Scotland. SEO will also examine the extent to which the measures taken in these countries can be implemented in the system for legal aid in the Netherlands and the cost implications this may entail.

The question that is central to this report is what can be learned from investigating the systems for subsidised legal aid in the Netherlands, Finland, and Scotland, with regard to the efficiency of the Dutch system for subsidised legal aid. This question will be answered by means of two specific scenarios. Firstly, in what ways will the costs of the Dutch system for subsidised legal aid be affected by using lawyers to provide primary legal aid services? Secondly, in what ways will the costs of the Dutch system for subsidised legal aid be affected by the use of legal expenses insurance?

### **Comparing the systems of the Netherlands, Finland, and Scotland**

Compared to Finland and Scotland, the primary and secondary forms of legal aid are more clearly separated in the Netherlands. In the Netherlands, legal action is only taken by privately employed lawyers, while in Finland and (to a lesser extent) in Scotland, this is done by public lawyers as well. In Scotland, privately employed lawyers perform activities that are, in the Netherlands, mainly performed by lower-qualified (and therefore cheaper) professionals working at legal services counters. The Dutch system for subsidised legal aid is more expensive per capita than the Finnish system and less expensive per capita than the Scottish system. The costs per legal aid certificate in the Netherlands are lower than the costs per dispute in Finland, and approximately equal to the costs per dispute in Scotland.

Determining the efficiency of the different systems has turned out to be quite complicated. This is mainly due to differences in definitions, institutional differences, and missing data. In order to clarify we have opted to work out the details of a divorce case. Even while working out this case, there turned out to be such great differences between the countries, that it is next to impossible to reach an integral quantitative judgement on the efficiency of the Dutch system. Nonetheless, it is evidenced by the case that the costs of subsidised legal aid for a similar divorce case in Scotland are higher than in the Netherlands; that for relatively simple divorce cases, people less often appeal for subsidised legal aid in Finland than they do in the Netherlands; and that in the Netherlands, the lowest incomes pay a higher contribution compared to Finland and Scotland.

### **Scenario 1 –lawyers providing primary legal aid**

In order to reinforce the primary form of aid, legal services counters can employ lawyers or have lawyers from private organisations provide consultations. These lawyers should focus on the disputes that are solvable without going to court but which are slightly too complex in the current situation for the professionals who work at legal services counters. This way the number of referrals to the secondary form of aid and the related costs can be limited. After all, lawyers who work for legal services counters and receive a fixed compensation have a lower production stimulus than lawyers who provide secondary legal aid services in the current situation, provided that the lawyers who work for legal services counters cannot refer cases to their own private organisations.

## **Scenario 2 – increasing the share of legal expenses insurance**

Increasing the share of legal expenses insurance is estimated to affect approximately thirty percent of the disputes for which an appeal to subsidised legal aid is made. These are the disputes that are insurable; most of the disputes for which people use subsidised legal aid are not insurable. The implementation of this policy is analysed in three ways: the insurable disputes can be excluded from subsidised legal aid, it can be made mandatory to make use of alternative forms of legal aid, and the contributions for insurable disputes can be increased. All three variations lead to 'a' saving of public resources and a transferral of public to private costs, but to what extent is hard to say.

## **Implementing scenarios in the Netherlands**

### *Scenario 1 – lawyers providing primary legal aid*

Legal services counters that want to make use of the services of currently private lawyers for primary legal aid can do this in two ways. They can offer one or several lawyers an employment contract, for instance for a certain hours a week or on the basis of a zero hour contract. Or they can hire (one or several) lawyers' services for periodic consultation. The second option seems preferable as it provides more flexibility for legal services counters and it avoids issues of lawyer's independence.

### *Scenario 2 – increasing the share of legal expenses insurance*

There are no practical reasons why the share of legal expenses insurance cannot be increased. Not issuing or increasing the costs of additions for insurable disputes can cause people who seek justice to forgo legal aid. It is questionable whether this is socially acceptable. The ones who make use of subsidised legal aid in the current situation mostly have a low income. Their options and willingness for taking out a legal expenses insurance are probably limited. Similar arguments can be made when the contributions for insurable disputes were to rise substantially. People will not be able to afford this extra contribution. Finally, the implementation of the obligation to make use of other forms of legal aid will have little consequence if there is no central registration. As long as appeals can also be made to subsidised legal aid, the financial stimulus to report will not increase because of this policy change.

### *Limitations concerning the determination of the consequences of scenarios*

When working out the effects of the implementation of these scenarios in the Netherlands, limitations arise. The lack of a clear connection between the efforts and the result, the lack of integral data on costs and advantages, and the different ways in which the systems of legal aid are structured in the Netherlands, Scotland, and Finland, make it impossible to perform a definite quantitative impact assessment. Because of this, the calculations in this study are based on assumptions that are validated on the basis of the available numbers, literature, and the interviews that were conducted with experts in the three countries. The results of these calculations thus indicate an impact direction, while the precise scope of the reported effects is less clear.