

Summary

Users of subsidised legal aid: characteristics, problems and income position

Background

In a well functioning state, under the rule of law, every citizen with a legal problem can obtain adequate legal assistance. Government is bound to ensure there is an arrangement which prevents citizens abandoning recourse to legal assistance on the grounds of cost. However, government is free in the design and specification of the arrangement. The design of the Dutch legal assistance scheme and the rules for granting subsidised legal aid to those with a lesser ability to pay has been codified in the Law on legal assistance (Wrb). On the basis of this law, people in lower income groups can apply for subsidised assignment of a lawyer. The individual client only pays a means-tested contribution, which may amount to nothing in some cases.

According to the 2007 coalition agreement, the current cabinet aims to realise a structural adjustment of €50 million through modification of the existing scheme. In order to be able to assess the impacts of possible scheme modifications, greater insight is needed into (potential) users of subsidised legal aid. For a loan scheme, in particular, it is important to examine what can be said about (potential) users' capacity to repay on the basis of their characteristics.

Not all legal problems for which legal aid is requested require equally frequent, comprehensive or specialized legal assistance. Besides, legal problems are not randomly distributed across users of legal aid. Interdependence of the characteristics of problems, legal assistance, and users implies differences in costs and any potentially required loan(s). Moreover, calling upon legal assistance is not always a matter of free choice. There is no choice in criminal and asylum law cases: subsidised assignment of a lawyer is automatic. By comparison, there is choice in civil law cases. Still, the degree of free choice need be neither large, nor the same for all civil law cases.

Problem statement

Within the framework of a possible switch to a loan scheme for legal assistance, the question regarding (potential) users' capacity to repay is the central issue in this research. Moreover, interdependence between characteristics of users and the nature of legal problems is important with a view to any required loans. Therefore, the goal of the research is:

To obtain insight into 1) the most important characteristics of (potential) users of legal aid, 2) the most common legal problems for which they request legal aid and 3) what can be inferred from this, in terms of (the development of) their income position and possible capacity to repay a loan.

By answering these questions, the research aims to contribute to the development of a policy vision for the Dutch legal aid scheme. To this end, the research questions are:

Which groups in the Dutch populace can be expected to have more, less or no capacity to repay?

To what extent do users of subsidised legal aid in civil matters have corresponding characteristics?

What are the most common legal problems for which users of legal aid received a subsidised lawyer assignment in a civil matter?

What can be inferred concerning (the development of) their income position and possible capacity to repay?

Research method

This exploratory study involved desk research, the purpose of which was to identify characteristics of persons and households that indicate elevated risk in relation to the capacity to repay. For the first time, data on subsidised lawyer assignments in civil matter from the legal aid administration system GRAS were coupled to micro data about the characteristics of receivers of subsidised assignments from Statistics Netherlands' Social Statistical Database. The coupled data was subsequently analysed. The research is limited to:

- exploration of characteristics of users of subsidised legal aid and their usage;
- subsidised assignments which were issued between 3 April and 26 July 2006;
- 'civil assignments', that is to say non-automatically issued subsidised assignments that are not related to criminal and asylum law.

Results

Differences in the capacity to repay loans between groups in the populace.

The ability to repay a debt — repayment capacity — presupposes disposable income above the subsistence level. The more disposable income there is, the greater the repayment capacity. Whether or not there is any income, is connected mainly with labour force participation past (entitlement to benefit or pension) or present. The amount of disposable incomes depends on income as well as unavoidable expenses such as the costs of living, fixed regular expenses and payments on any pre-existing debts. The research examines which groups in the populace can be expected to have a greater, lesser or non-existent capacity to repay loans. The greater the correspondence of the characteristics of users of subsidised legal aid with the characteristics of the latter two groups, the smaller the chance that those users have a capacity to repay loans.

From the literature it emerges that the risk of limited repayment capacity is larger to the degree that:

- (prior) labour force participation is smaller;
- income is lower;
- the household is located in large(r) city;
- a larger part of the household income consists of unearned income;
- a household's ratio of income earning to dependent members is less favourable;
- the primary income earner is at the beginning or end of his/her work life;

- the education level of the primary income earner is lower;
- the primary income earner is a (non-western) newcomer to the Netherlands.

Furthermore, these characteristics are related. Labour force participation and the amount of (last) earned income are connected to personal characteristics. Women, young people between 18 and 25 years of age, workers in the 55-65 year age bracket, and less educated people, among which many immigrants, are known to have a weak labour market position. They participate less in labour and earn less when they do participate. They also tend to have lower job security. Their higher rate of premature resignation or retirement disrupts their income development, increasing risks of a low (often unearned) income and problematic debt.

Disposable income is not a static given, however. Income may develop and there are also risks that threaten income. Both development and risks are tied to age.

The chances of (temporary) in- or decrease of repayment capacity therefore varies with career- and life stage. Because of problems experienced with reintegration, in particular from social welfare and disability benefits schemes, benefit recipients, singles, single-parent families with underage children, as well as first generation, non-western immigrants, have an elevated risk not only of a low income but also of a *long-term* low income.

Characteristics of users of subsidised assignments in civil matters

Users of subsidised assignments in civil cases have two main sources of income: wages and benefits. One in every three subsidy users works. Nearly all of those that actively participate in the labour process are in paid employment, which brings their household an average income of €16,200. The average job duration (4.7 year) suggests mainly permanent job appointments. Another one in three subsidy users receives a benefit payment (i.e. a lesser income). One in five subsidy users is both inactive and without benefit or pension (household income averages €3.900).

The weak financial position of many users of subsidised assignment is related to their personal characteristics, which are indicative of a weak labour market position. The incidence of women, first generation non-Western immigrants, young people under 25 years of age, older employees (age 55-65 years), singles, single parent families and families with young children is relatively high among subsidy users. Combination of two or more of these characteristics yields high poverty rates (25-64%). Compared to the populace, there are relatively many inactive persons among the subsidy users. A good portion of inactive users has no income whatsoever. The inactive subsidy users that have income are mainly benefit recipients. Half of them are on social welfare. This subgroup has the highest poverty rate and a low reintegrability. One third of all benefit recipients receive disability benefits. This second subgroup has the lowest reintegrability and an elevated risk of poverty. On the one hand this is logical, given the target population of the Law on legal assistance. On the other hand, however, it means that the income position and repayment capacity of users of subsidised lawyer assignments in civil cases is vulnerable.

Legal problems of users of subsidised assignments in civil matters

Subsidised civil assignments are concentrated in the areas of person- and family law (41%) and administrative law (30%). Divorce features prominently in the former area and social security and immigration law in the latter. There clearly is a

relation between the characteristics of users of subsidised assignments and the type of legal problems for which they request subsidised legal aid. Relatively large proportions of subsidised civil assignments in the area of person- and family law are found mainly for employees, self-employed persons, (single parent) families with a youngest child of less than 13 years old, persons of between 30 and 45 years old, and indigenous Dutch. By contrast, relatively large proportions of subsidised civil assignments in the area of administrative law are found for inactives without income, receivers of (social welfare) benefits, single person households, persons in institutional households (prisons, nursing homes, mental institutions, etc.), men, persons aged 55-65 years, and non-Western immigrants (of other than Surinam, Antillean or Aruban descent).

Multiple or repeat use is the case for 17% of all subsidised assignments. This involves 10% of the subsidy users. Among subsidised assignments, multiple use is the least frequent in the area of person- and family law (15%) and the most frequent in the area of administrative law (39%). Multiple users are mainly recipients of social assistance benefits, single person households, persons in institutional households, 35-40 years or 55-60 years of age and non-Western immigrants. Single users are mainly pensioners, (married) couples, younger people under 25 or over 65 years of age, and indigenous Dutch.

Conclusion

Relatively speaking, we find fewer persons with an income deriving from work or a pension among the subsidy users than we do among the general populace. There are four times as many recipients of benefits among subsidy users as there are among the populace. Moreover, we find a comparatively large proportion of them in exactly those subgroups with the highest risks of poverty and the lowest proportions of reintegratable persons, i.e. the recipients of social welfare and disability benefits. Half of the benefit receiving users of subsidised civil lawyer assignments receives social welfare benefits. The average family income of social welfare recipients is over one fifth lower than that of the employed. Considering the target population of the Law on legal assistance (Wrb) this is logical. However, it means a vulnerable income position is a given. Underlying this is a weak labour market position, which is connected to the social-demographic characteristics of users of civil assignments. Women, first generation non-Western immigrants, single person households and (single parent) families with young children are well represented.

The repayment capacity of many users of subsidised civil assignments is limited therefore. Moreover, the relatively large proportion of 'inactives' receiving benefits, the concentration of those benefits in the area of social welfare assistance, and the relatively low chance of outflow from welfare to work mean that prospects for improvement of repayment capacity are also few.

All things considered, the characteristics of at least the current users of subsidised lawyer assignments do not now indicate conditions favourable to a loan scheme.