

Summary

Legal Aid and Dispute Settlement Monitor Measurement 2011

Various cutbacks on expenses related to subsidised legal aid have been announced in recent years. The Coalition Agreement of the Balkenende IV government included structural annual savings of 50 million euros relative to the trend-related development. In 2008, the programme entitled 'Legal Aid and Dispute Settlement' proposed various measures to realise these savings and additional cutbacks on the judiciary of 18.6 million euros because the measures are also intended to lead to a lower influx of court cases. The programme focused on the realisation of both improvement of the quality of services provided by the government and structural cutbacks with respect to subsidised legal aid and judiciary. All structural savings have to be realised by 2015.

The Coalition Agreement of the Rutte Cabinet includes a new annual cutback of 50 million euros effective as of 2014. In addition, it was announced in October 2011 that a deficit of 15 million euros resulting from the Salduz ruling has to be compensated for within the budget for subsidised legal aid. The new measures to realise these cutbacks are all price changes and price incentives that should reduce the costs for the government. They relate to (a reduction of) the compensation to legal aid professionals and (an increase in) the personal contribution of people receiving subsidised legal aid. In addition, a target will be imposed on the Legal Aid Board. The Minister of Security and Justice indicated that he considers a reform of the subsidised legal aid system to be necessary.

Aim and research question

The monitor *Legal Aid and Dispute Settlement* is intended to monitor the status of the measures from the 2008 target, and to evaluate it in 2015. The extent to which an evaluation in 2015 is still useful, in view of all the new changes and a possible reform of the system, still remains to be seen. The first report of the monitor, which was published in 2010, describes measures in the field of administrative law, family law, consumer law, criminal law and measures that have an impact on multiple fields of law. Not all fields of law will be dealt with each year. At the request of the Justice Administration Department of the Ministry of Security and Justice, the current monitor focuses on administrative law, family law, and an overall summary of all fields of law. The overall summary was prompted by the fact that a part of the new measures have an impact on all fields of law.

The research question of the monitor reads:

How has the number of legal aid cases and court proceedings developed between 2000 and 2010, and how high are the related expenses? What are the main findings when compared with the first report of the monitor?

The following subquestions have been answered:

- 1 What is the status of the measures in the relevant fields of law, and have other relevant legislative or policy amendments been implemented?
- 2 How have the expenses for legal aid and judiciary developed?

- 3 What is the development of the number of legal aid cases and the number of (objection and) court proceedings?
- 4 How has the average personal contribution of people receiving legal aid developed?

Research method

The data concerning numbers of legal aid cases and related expenses were obtained from the legal aid payment file of the Legal Aid Board (RvR). Data concerning the number of court cases and related expenses originate from the Council for the Judiciary (Rvdr) and Statistics Netherlands (CBS).

The expenses reported in the current monitor are not corrected for inflation: they concern so-called nominal amounts.

The measures of the programme entitled 'Legal Aid and Dispute Settlement' are described in the first report of the monitor in which a distinction was made between various mechanisms underlying the measures. Those mechanisms can be divided into mechanisms with a certain outcome and those with an uncertain outcome.

Mechanisms with a certain outcome will yield immediate cutbacks. These include:

- Price changes: adjusting the price reduces the government expenditures on legal aid.
- Entitlement: by adjusting the conditions regarding citizens' entitlement to legal aid, fewer legal aid assignments will, on balance, be granted.

Mechanisms with an uncertain outcome are generally effected by a behavioural change, whereby the extent to which such change will take place is, in advance, uncertain. These mechanisms include:

- Financial incentives: by increasing or reducing the costs or benefits of conduct, a behavioural change among the target group will be realised, that will, on balance, lead to reduced (costs of) legal aid and court cases.
- Provision of information: by providing more and better information to those seeking justice, conflicts may be prevented, and existing conflicts may be settled more effectively and more efficiently.
- Changing the government's treatment of citizens: by insuring that the government treats citizens more personally, conflicts may be prevented.
- Guidance: by providing the person entitled to legal aid with intensive guidance, causes of problems may be removed, new problems may be prevented, and existing problems can be resolved more effectively and efficiently.

Tables S1 to tables S3 provide a summary of the main findings per measure.

Table S1 Overview table of general measures (new measures have been printed in italics)

Measure	Type of mechanism	Objective	Implementation phase*	Trend 2009-2010 legal aid	Trend 2009-2010 judiciary	Important influencing factors
General measures				From 317 million euros to 332 million euros. From 397,000 to 402,000 cases. Increase of stand-by duty lawyer fees from 24 million euros to 27 million euros.	Increase from 1.9 to 2.0 million cases. An increase in district court cases and a decrease of crime cases.	Economic developments Salduz ruling.
Improvement of diagnosis and triage	Information and financial incentive	Resolution of conflict without going to court	Introduced on 01/07/2011			
Increase in the amounts of minimum financial interest	Entitlement	Fewer legal aid cases	Introduced on 23/04/2010			
Multiple legal aid / limit accumulation	Guidance	Resolution of underlying debt-related problems	Draft. Implementation project plan RvR 2 nd quarter 2012			
<i>Reduction in the compensation for legal aid professionals, and adjustment of indexation</i>	Price change	Direct savings	1 st phase as of 01/01/2012			
<i>Lower compensation in the event of apparent inadmissibility</i>	Price change	Direct savings	Draft			
<i>Increase in the personal contribution</i>	Price change	Direct savings	Draft	Increase in the personal contribution from € 100 to € 110. A decrease in the personal contribution between 2006-2009.		Cancelled suspension of personal contribution for criminal legal aid cases in 2009. LAT and VIValt in 2006, introduction of mediation assignment in 2005.
<i>Extra personal contribution in laborious cases</i>	Price change	Direct savings	Draft			
<i>Extra personal contribution if a lawyer is replaced</i>	Price change	Direct savings	Draft			
<i>Changes in the accumulation scheme</i>	Price change	Direct savings	Draft			

* Study: the possibilities for elaborating the measure are explored; Draft: the measure is shaped; Introduced on: the measure has been introduced on a certain date.

Table S2 Overview table of measures under administrative law

Measure	Type of mechanism	Objective	Implementation phase*	Trend 2009-2010 legal aid	Trend 2009-2010 judiciary	Important influencing factors
<i>Administrative law</i>				Increase from 113,000 to 118,000 legal aid cases. Increase from 86 million euros to 93 million euros. Mainly increase in asylum cases.	Increase from 90,000 to 97,000 cases (except asylum first instance). Mainly an increase in cases concerning asylum (higher court) and social security (courts).	Economic crisis. Asylum influx.
Proactive dispute settlement by the government	Treatment and information	Prevention of conflicts, or solving them at an early stage	Varies per organisation. Already introduced at Employee Insurance Agency (UWV), the Tax and Customs Administration and many municipalities	Decrease in the number of cases related to social security.		
Increase of the payment of legal costs by government agencies	Price changes and financial incentives	- better alignment of legal costs and actual legal costs - Reduced costs of legal aid, fewer proceedings	Introduced on 01/10/2009	Savings of 1 million euros on compensation of costs		ABRV decision (21/02/2007, LJN: AZ9000)
Reduction of compensation in cases involving aliens detention	Price change	Direct savings	Introduced on 23/04/2010	Savings 1 million euros		

* Study: the possibilities for elaborating the measure are explored; Draft: the measure is shaped; Introduced on: the measure has been introduced on a certain date.

Table S3 Overview table of family law measures (new measures have been printed in italics)

Measure	Type of mechanism	Objective	Implementation phase*	Trend 2009-2010 legal aid	Trend 2009-2010 judiciary	Important influencing factors
Family law Encouraging joint agreements during divorce proceedings - online divorce plan and online mediation	Information and guidance	Fewer adversarial divorce proceedings and fewer follow-up proceedings	Online divorce plan introduced on 06/09/2010; online mediation in 2010;	Total number of assignments increases by 5,500. <i>Divorce cases</i> : increase from 24.4 million euros to 26.9 million euros. <i>Divorce-related</i> : increase from 28.5 million euros to 31.9 million euros.	Number of divorces increases. Adversarial divorce proceedings drop from 6,300 to 5,100. Divorce-related remain nearly the same at 25,000 cases. Conflict proceedings remain at 16,000.	Continued Parenthood and Well-Planned Divorce Act introduced in 2009: - abolition of flash divorce - mandatory parenting plan
<i>Increase in personal contribution</i> : - both for divorce and for divorce-related; - not for mediation assignment.	Price changes and financial incentives	Direct savings Promoting mediation	Design	Average personal contribution € 150 for divorce assignments and € 130 for divorce-related assignments. A decrease of the personal contribution from 2006.		LAT and VIValt 2006, mediation assignment 2005.
Simpler calculation for child maintenance	Not yet specified	fewer follow-up proceedings	Study (proposal Recourt/vd Steur)	<i>Maintenance (not specifically child maintenance)</i> : increase by 1,200 assignments; increase from 12.2 million euros to 13.4 million euros.	The number of child maintenance cases increases from 8,100 to 8,500. Adversarial proceedings increase from 3,800 to 4,100.	- introduction of mandatory parenting plan in 2009. - changes to Trema standards in 2009

* Study: the possibilities for elaborating the measure are explored; Draft: the measure is shaped; Introduced on: the measure has been introduced on a certain date.

General developments in assignments of counsel and court cases

Measures of the Balkenende IV Cabinet

The target of the Balkenende Cabinet resulted in the introduction of two measures related to the broad field of the administration of justice (see Table 1). First, *the minimal financial interest was increased* in April 2010 for three types of assignment: legal aid for minor advice (to € 250), regular legal aid (to € 500), and legal aid for cases for the Supreme Court (to € 1,000). Through this measure fewer disputes will qualify for legal aid. Second, the *Diagnosis and Triage* measure was introduced in July 2011. The measure encourages those seeking justice to first submit their dispute to the Legal Services Counter ('het Juridisch Loket') before turning to a lawyer (by means of a discount of €50 on the personal contribution for legal aid). The objective is to encourage citizens to use simpler and less expensive channels. As this measure was introduced in 2011, it falls outside the scope of the research data used for this report.

Measures in specific fields (see below administrative and family law) were also introduced, which could influence the number of legal aid and court cases too. Because the measures are introduced recently, the expected effects will only be visible to a limited extent -if visible- in the data for 2010.

Measures of the Rutte Cabinet

The Rutte Cabinet has announced new measures that relate to the full spectrum of legal aid. These measures mainly pertain to the compensation for legal aid professionals and to the personal contribution of people who use legal aid (see Table 1). *Reduction of compensation for legal aid professionals, and indexation.* An order in council is being prepared which contains a reduction of the compensation for the legal aid professionals, as well as an adjustment of the indexation measure of this compensation. These measures are intended to enter into effect on 1 January 2012. Reduction of the compensation for legal aid professionals will occur in two phases. *Lower compensation in the event of apparent inadmissibility.* It is proposed to reduce the compensation for the legal aid professionals if a case is declared apparently inadmissible by the court. If that is the case, the assigned number of points for compensation will be reduced by fifty percent.

Increase in personal contribution. It is intended to implement a structural increase of the personal contributions in all fields of law. The increase differs per income category and varies between € 25 and € 203.

Extra personal contribution when a lawyer is replaced. If there are no compelling reasons for having a different lawyer assess the case, but this does involve additional costs, the party seeking legal aid will have to pay an extra personal contribution for the second assessment.

Extra contribution in laborious cases. The intention is to obtain an additional personal contribution in laborious legal aid cases from persons who have to pay a personal contribution.

Adjustment of the anticumulation scheme. In order to create an obstruction against thoughtless further litigation, it is proposed to set the personal contribution for the fifth and any subsequent assignments at 150% of the first imposed personal contribution.

Development of legal aid cases

The number of legal aid cases has remained almost the same between 2009 and 2010. A total of approximately 400,000 legal aid assignments were granted in 2010. The expenses related to legal aid (including additional hours) increased from 317 million euros in 2009 to 332 million euros in 2010. The number of assignments in

the field of civil law and administrative law increased between 2009 and 2010, while the number of assignments for criminal cases decreased. The compensation paid to stand-by duty lawyers increased from 89,000 in 2009 to 110,000 in 2010 as a result of the Salduz ruling. During these two years, the expenses related to compensation for stand-by duty lawyers increased from 24 million euros (2009) to 27 million (2010).

Development of compensation for additional hours

The number of compensations for additional hours seems to be decreasing due to the revision of the Guideline on Laborious Cases. In 2008, the compensation of additional hours still amounted to 33 million. This amount decreased to 16 million euros in 2009. This amount was even lower for 2010, but we are not yet sure whether the reduction for this year is part of the declining trend that has commenced. The amount is not yet reliable, because many declarations will not have been processed yet.

Development of court cases

The expenses for court cases increased from 868 million euros in 2009 to 912 million euros in 2010. In 2010, the courts handled approximately 2.0 million cases and approximately 1.9 million cases in 2009. In recent years, the number of cases before the sub district sector increased in particular. The increase in this sector is mainly caused by the economic crisis (as indicated by many collection cases). Furthermore, the number of cases within the civil law sector and administrative-law sector slightly increased, and the number of criminal cases decreased. The expenses for appeal cases increased for the fields of civil law and criminal law, and remained almost stable for tax cases and cases that have been handled by the Central Appeals Tribunal (for the public service and social security matters).

Personal contribution

The percentage of legal aid cases not subject to a statutory personal contribution is 30% in 2010 (7% asylum and 23% ex officio). The average personal contribution pertaining to the remaining assignments increased between 2009 and 2010 from € 100 to € 110. This increase is mainly attributable to an increase in the personal contribution in the case of non ex officio criminal legal aid cases. In these cases the personal contribution of those classed in the lowest personal contribution category is no longer suspended.

Administrative law

Approximately 30% of the established expenses for legal aid cases pertains to administrative law. In order to reduce expenses, two measures have been proposed for administrative law that are of influence with respect to administrative law in general: proactive dispute settlement by the government, and an increase in the payment of legal costs for government agencies. One measure focuses on aliens detention: the adjustment of the compensation for aliens detention.

General measures pertaining to administrative law

The measure 'Proactive Dispute Settlement by the Government' (PAGO) is intended to solve disputes between government agencies and citizens at an early stage. It is expected that a proactive approach, including a different form of treatment of and information provision to citizens, will promote early dispute settlement. This measure should consequently prevent unnecessary objection and appeal proceedings.

This measure could also mean an improvement of government services. Within the Ministry of Security and Justice, PAGO has since ended, and has been followed up by the programme entitled 'Burgergericht Werken'. Furthermore, various government agencies – such as the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB) and several municipalities – have started such measures in recent years.

The increase of the compensation of legal costs for government agencies entered into effect on 1 October 2009. If a government agency loses a court case against a private citizen, the agency may be ordered to pay the legal costs. The payment of legal costs was increased in 2009 and was indexed each year thereafter. As the payment of legal costs can be deducted from the compensation for legal aid, the RvR will have fewer expenses due to indexation. The RvR had to pay out 1 million euros less between 2009 and 2010 as a result of the increased payment of legal costs.

Legal aid and court cases

The total amounts of legal aid compensation in administrative law increased from 86 million euros in 2009 to 93 million euros in 2010. The number of legal aid cases in administrative law increased from 113,000 in 2009 to 118,000 in 2010. This increase is mainly attributable to the number of asylum cases. The number of legal aid cases with respect to social security benefits remains stable in 2010, while assignments for social security and aliens affairs cases decreased in 2010.

With respect to the judiciary, the number of administrative-law cases increased from 90,000 to 97,000 cases (asylum first instance excluded) between 2009 and 2010. This increase is caused by an increase in the number of cases before the District Courts and at the Administrative Jurisdiction Division of the Council of State.

Personal contribution

The average personal contribution for people with a legal aid assignment in the field of administrative law has increased from € 73 to € 88 between 2009 and 2010.

Measure pertaining to aliens detention

The essence of the measure 'adjustment of compensation for aliens detention' is a price change. The fee for lawyers involved in follow-up appeal cases concerning aliens detention has been reduced from 4 to 3 points if a hearing takes place and to 1 point if a hearing does not take place. The measure was introduced on 23 April 2010.

The expenses related to legal aid for aliens detention decreased from 12 million in 2009 to approximately 11 million in 2010, while the number of aliens detention cases remained level, i.e. 20,000. The decrease in expenses is directly attributable to the reduction of the number of points.

Family law

In the past years, approximately 20% of the expenses for legal aid cases were related to the field of persons and family law. The established expenses related to assignments in this field increased from 73.2 million euros to 80.4 million euros between 2009 and 2010. This mainly concerns legal aid cases regarding divorce proceedings and divorce-related problems. A total of approximately 58.9 million euro was spent on the above in 2010. The 2008 target proposes two measures: the promotion of agreements in the event of a divorce, and the simplification of child maintenance. The target of the Rutte Cabinet added a new cutback measure:

increasing the personal contribution for people who use legal aid. We will first discuss the measures that related to the entire spectrum of divorce and divorce-related cases: the promotion of joint agreements and an increase in the personal contribution. This will be followed by the measure that relates to child maintenance.

Measures pertaining to divorce and divorce-related matters

The first main measure concerns the promotion of agreements in the case of divorce. This should lead to fewer adversarial divorce proceedings and fewer follow-up proceedings. Various partial measures have been introduced or announced in order to achieve the above. First, two Internet applications have been developed that are intended to support the divorce process. An application for drawing up a parenting and a divorce plan online was introduced on 6 September 2010 (www.echtscheidingsplan.nl). An application for online mediation was also added to the RvR website in 2010. By providing information and offering tools, these applications are intended to encourage the conclusion of joint agreements in divorce cases, and to increase the partners' self-reliance. From September 2010 to the end 2011, 1,900 couples jointly started a file at www.echtscheidingsplan.nl and 241 couples completed their divorce / parenting plan. The second partial measure, the introduction of a supervising judge for divorce cases, was not followed up. There have been no new developments since the pilot of 2009.

In 2011 a draft of a new cutback measure was sent to the Lower House: this concerned an increase in the personal contribution for those who make use of legal aid in divorce and divorce-related cases in 2012. This increase comes on top of the generic increase in the personal contribution that was also announced for 2012. These price changes are mainly intended to result in the guaranteed savings.

Court cases and legal aid cases

The number of settled divorce proceedings at the courts was nearly 35,000 in 2010 and the number of divorce-related proceedings approximately 25,000. In total, this comes down to approximately 60,000 court proceedings, 3,000 more than in 2009. The number of court proceedings in 2010 deviates from the trend of the past years in several respects.

First, the number of divorces in the Netherlands increased for the first time in years. The number of divorce proceedings increased from 32,000 to nearly 35,000 between 2009 and 2010. Joint divorce petitions and unilateral undefended applications have increased in particular. This indicates that the introduction of the Continued Parenthood and Well-Planned Divorce Act in March 2009 is probably responsible for an increase in the number of divorce proceedings. The act resulted in the abolition of the flash divorce and the requirement that divorcing parents who have custody of minor children must submit a parenting plan to the court. Both consequences mean that more divorces will go through the courts than before.

Second, there were fewer adversarial divorce proceedings in 2010 than in previous years. The number dropped from 6,300 in 2009 to 5,100 in 2010. The decrease in the number of adversarial proceedings may be the result of the introduction of the mandatory parenting plan. After all, partners have been obliged since March 2009 to reach agreement on various consequences before the divorce.

Third, after having risen for years, the number of divorce-related proceedings remained approximately the same in 2010 (25,000 court cases). We have also designated approximately 16,000 proceedings in 2010 as 'conflict proceedings' (adversarial proceedings, interlocutory proceedings and appeals).

In 2010, approximately 32,000 legal aid assignments were granted for divorces and 41,000 for divorce-related cases. In total, the number of legal aid assignments for

divorce and divorce-related cases increased by 5,500 between 2009 and 2010. The related costs increased by 6 million euros from nearly 53 million euros to nearly 59 million euros. The expenses are highest for maintenance, adversarial divorce proceedings and access arrangements. The number of legal aid cases shows both departures from the trend as well as continuation of trends from previous years. First, similarly to court proceedings, the number of legal aid cases for divorce proceedings increased when compared with previous years, and that increase also occurs mainly in divorce proceedings that are not defended. This increase can probably also be attributed to the introduction of the Continued Parenthood and Well-Planned Divorce Act in 2009. The number of assignments for a unilateral defended petition has remained almost stable in recent years. Second, the number of divorce-related legal aid cases increased further as in previous years. This while the number of court proceedings for divorce-related cases remain virtually the same between 2009 and 2010. It is unclear what is causing the increase. It could be the case that the number of persons of limited means has increased among the group of persons seeking justice. In particular the number of legal aid cases and the expenses related to maintenance and access arrangements increased in recent years.

Personal contribution

In 2010, the average personal contribution for legal aid in divorce cases amounted to approximately € 150 and for divorce-related cases to nearly € 130. As of 2006, the amount of the average personal contribution decreased by approximately € 40. That decrease may be related to the introduction of VIValt in 2006, because the calculation of income and assets was changed at that time. The mediation assignment was also introduced in 2005, in respect of which the person seeking legal aid pays a lower personal contribution than for a regular assignment. Mediation assignments are mainly granted for divorce and divorce-related cases.

Child maintenance measure

The assumption is that the calculation of child maintenance – by means of the Trema standards – is complicated and open to more than one interpretation, which means that unnecessary proceedings about the amount of child maintenance are being conducted. The Trema standards also include various income and expense items, which means that changes in those items can lead to amendment applications. The measure is intended to simplify the calculation of child maintenance and consequently reduce the number of maintenance proceedings. At the time this report is being published, no specific measures intended to achieve simplification have been elaborated. The Minister is awaiting the motions to be submitted by Members of Parliament Recourt and Van der Steur.

The number of court proceedings for determining or changing child maintenance increases every year. A total of 8,500 proceedings to determine or change child maintenance were conducted in 2010. That is approximately twice as much as in 2000 and 400 more than in 2009. The number of determinations and the number of amendment applications is approximately the same each year. Approximately fifty percent of the settled applications were adversarial.

Since 2002, the number of legal aid assignments in maintenance cases (both child and partner maintenance) has increased each year. In 2010, approximately 18,000 legal aid cases for maintenance were determined, in respect of which 13 million euros has been paid out in compensation. Maintenance cases, moreover, have a relatively high percentage of adversarial and appeal proceedings.

The increase of court proceedings concerning child maintenance cannot be explained by the fact that there are more divorces involving minor children. The absolute number of divorces involving minor children has remained approximately the same in recent years and dropped slightly in 2009. Moreover, the increase in proceedings cannot be explained by the fact that child maintenance arrangements are concluded less often in the divorce decree. This number remained virtually stable between 2003 and 2009. One of the causes of the increase in the number of maintenance proceedings could be the fact that more divorcing cohabitating partners with minor children have agreements on child maintenance laid down via the courts. We do not have any data about this, however.

Follow-up measurements

The follow-up measurements of this monitor will deal in greater detail with the implementation of the measures and the possible determination of the effects of these measures. Not all measures will be dealt with extensively each year. As the Minister proposes a reform of the system of subsidised legal aid in the future, it will have to be assessed whether an evaluation of the measures in 2015 is still realistic at that time.

The bundling of the various cutback measures makes it nearly impossible to attribute certain cutback effects to individual measures. This is caused by the fact that various measures are aimed at the same type of legal aid cases or court cases. Follow-up measurements should also take into account the fact that possible external factors could influence the effects of the measures. Think in this connection of the economic situation, legislative amendments or major cutback measures, such as the proposal to increase the court fees. If such factors occur, we will deal with them in the follow-up measurements.