

INTRODUCTION

1.1. Towards renewal of the civil justice system

The editors of the volume *Naar een vernieuwing van de (civiele) rechtspleging* (i.e. ‘Towards a revision of the civil justice system’), published in 2019, conclude with other authors that the civil justice system has a number of shortcomings.¹ The costs of proceedings are too high, proceedings take too long, and the outcome of civil proceedings does not always provide a solution to the problems or conflicts faced by citizens and businesses. In many cases, citizens and small businesses are unsure where to get their information and which route best suits the solution to their problem. Because of these barriers, not every citizen or entrepreneur gets an adequate solution to the legal problems they are facing. These problems do not only occur in civil legal problems and disputes; citizens also experience similar problems when in contact with the government and resulting proceedings.

In the Netherlands, there is no shared view of how the legal system should be organised and in what way the role of the various players should be fulfilled. A shared view is also absent from academic discourse, while administrators and policymakers also do not have a shared vision. The lack of a shared vision also results in policy on legal aid, conflict resolution and justice. Within these policies, several, mutually contradictory, goals are pursued. On the one hand, there are efforts to increase access to justice. In that context, measures have been taken in recent years to ease the access to the courts.

¹ Groenewald et al 2019.

The abolition of the so-called ‘*procuraat*’, i.e. the obligation to appoint a lawyer who is responsible for the acts of procedure, the expansion of the competency of subdistrict courts (*kantonrechter*) as well as the measures that have been taken to improve digital accessibility are examples of this. At the same time, the court fee has been increased significantly several times over the past 20 years, leading to a higher financial threshold for access to justice. However, court fees have since been reduced again for lower-value claims. In addition, the promotion of alternative forms of dispute resolution, hereafter also referred to by the common abbreviation ADR, is an important pillar of the governmental policy on dispute resolution. Since 2002, various forms of out-of-court conflict resolution, such as consumer dispute committees, mediation and other forms of resolution, have been promoted.

This raises the question of whether this ambiguous policy causes uncertainty among individuals and businesses as to which authority they can turn to with their legal problem. Moreover, the periodic Dispute Resolution Delta survey shows that the use of the courts as well as other forms of dispute resolution have declined in recent years.² There are concerns about this development. In particular, it raises the question of whether the judiciary still gets enough, and especially the right, cases to fulfil its duty to the public to set standards.³

Furthermore, many private, public and semi-public providers of various forms of legal services, conflict resolution and dispute resolution. Besides the classic legal professions such as civil-law notaries, lawyers and bailiffs, there are social counsellors, debt collection agencies, debt relief workers, ombudsmen, lawyers from legal aid insurers or the Legal Aid and Advice Centre (*Juridisch Loket*), administrators and personal injury advisers. To some extent, the services provided by these legal assistance providers overlap. On top of that, in the domain of conflict resolution and legal service, the role played by digital platforms is growing. They have gained a foothold in several areas and

2 Bauw & Roos 2021; Ter Voert & Hoekstra 2020, p. 201.

3 De Bock 2017, p. 17; Flango & Clarke 2014.

their share of online services is expected to grow in the coming years.⁴ However, it is not always clear to individuals and businesses with legal problems what quality these service providers offer or how many legal guarantees are provided.

It is therefore fair to say that a balanced and coherent system of legal aid, conflict resolution and dispute resolution is still being sought in the Dutch legal system. That said, two major developments have been noted. First of all, this concerns a broadening of first-line legal assistance towards an assessment of what type of assistance is needed and the provision of integral assistance in multi-problem situations. Stimulating individuals' self-solving abilities is part of this development. The review of the system of funded legal aid initiated by the Minister for Legal Protection (hereinafter: the Minister) in 2018 refers to this development.⁵

The second development concerns a shift from judges as dispute adjudicators to judges as conflict resolvers. This means that judges are no longer solely focused on a legal assessment, but that they also want their decisions to contribute to finding a solution to the conflict that divides parties.⁶ The Socially Effective Justice Programme (*Maatschappelijk Effectieve Rechtspraak*) (hereinafter: the MER programme) that the judiciary started in 2018 is partly aimed at this broadening of the role of the judge.⁷ As part of this programme, pilot projects have been started that offer a simple civil procedure in which ample attention is paid to resolving the conflict between parties. These initiatives aim to bring the judiciary more to the citizen and to pay more attention to the underlying conflict between parties.⁸ The following section will elaborate on both developments.

4 Hartendorp & Van der Kraats 2021.

5 Outline policy memorandum 2018.

6 Dubelaar et al 2021, p. 328.

7 Hartendorp, AA 2020, p. 544.

8 Dubelaar et al 2021, p. 328.

1.2. Two developments in the legal system

Review of frontline legal aid

The system for subsidised legal aid has long been a subject of concern and debate. In recent years, several commissions have looked into the accessibility, financing and effectiveness of subsidised legal aid.⁹ A thorough review of the system was deemed necessary. In 2018, the minister set out the starting points for the system review in the *Outline Memorandum on the Review of the Subsidised Legal Aid System*.¹⁰ The 2018 Outline Memorandum contains the following analysis with regard to frontline legal aid:

‘In practice, a systematic, integral assessment of the problem and, from there, a vision of the most appropriate help is lacking. Frontline care is often skipped and where it is available, the problem diagnosis is often too legal. Primary care is also insufficiently connected to the work of municipalities and to developments in the social domain. As a result, a broader range of solutions too often remains out of the picture. Furthermore, the online offer of frontline help in particular is too limited and also too confusing.’¹¹

The Ministry of Justice and Security has launched a programme to lead to funded legal aid that better meets the needs of citizens. In that context, several initiatives have been undertaken that focus on the following four topics: (1) easily accessible information and advisory function; (2) well-functioning diagnosis and advisory function for possible follow-up steps; (3) less escalation of disputes; and (4) physically easily accessible legal help for those who need it most. The issues will be discussed successively below.

9 Wolfsen Committee Report 2015 and Barkhuysen Committee Report 2015.

10 Contour Nota 2018.

11 Outline Policy Memorandum 2018, p. 6. The 2018 memorandum also focuses, among other things, on preventing government-induced (unnecessary) procedures and strengthening second-line legal aid. As these topics only indirectly touch upon the subject of this study, these themes will not be discussed further.

1. Easily accessible information and the advisory function

First, it aims to increase the accessibility of information. Many litigants are able to take steps themselves to solve their legal problems based on simple online advice. For this reason, efforts are being made to improve the online provision of information and advice. The Legal Aid and Advice Centre is an important point of entry in this respect, the basic principle being: online where possible and by phone or in person where necessary.¹² With the help of a digital assistant, information is provided on various legal problems and a pilot project is investigating whether video calls have added value.¹³

Not all members of the public with legal problems are able to solve their perceived problem without the help of a legal assistance provider. In this connection, Statistics Netherlands (*Centraal Bureau voor de Statistiek*) carried out a target group analysis commissioned by the Ministry of Justice and Security.¹⁴ This study shows that about one fifth of the people in the target group who rely on help from the Legal Aid and Advice Centre and/or financed legal aid require, on average, a great deal of guidance from a professional counsellor. In addition to this, about a fifth of this group mainly tackle the issue themselves, but then seek confirmation from a legal assistance provider.¹⁵ This means that a large group – in addition to online advice – needs help from a legal assistance provider.

2. Well-functioning diagnosis and advisory function for possible follow-up steps

In this context, the Legal Aid and Advice Centre, the Legal Aid Board, the Netherlands Bar Association, the advice function and Social Work Netherlands developed a prototype of a diagnostic tool.¹⁶ With the help of this tool, litigants and professional social workers should be able to determine which legal aid package best suits the legal problem of the

12 Sixth Progress Report 2021, p. 5.

13 Sixth Progress Report 2021, p. 6.

14 Ebenau et al 2021.

15 Sixth Progress Report 2021, p. 6.

16 Sixth Progress Report 2021, p. 7.