

National report on legal aid: Belgium

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1. Sixth state reform: first-line legal aid transferred to the communities

Since the sixth state reform of 2014, discussion of a Belgian legal aid system has become a more difficult challenge, as it is no longer the responsibility of the federal state. First-line legal aid provided by advocates, which encompasses the provision of legal information and initial, rather limited legal advice and referral, is now the jurisdiction of the French-speaking and Dutch-speaking communities.

2. First-line legal aid in Flanders

The Flemish Minister for Welfare, Public Health and Family, Jo Vandeurzen (CS&V Christian Democrats), appears to have situated first-line legal aid within general welfare. In fact, in his policy statement of 16 October 2015, the Minister chose to strongly embed first-line legal aid within a general welfare approach.

On the supply side, the commissions for legal aid and the Flemish Bar prepared a situation report on their activities. Subsequently, an action plan should be drafted to optimize legal aid in the first line. The aim is to increase accessibility, and to achieve this, the Minister explicitly stated that opportunities for online legal aid should also be explored. Legal services on the frontline must also adhere to clear quality standards. Social welfare partners¹ such as General Welfare Centres (*Centra Algemeen Welzijnswerk, CAW*), which are non-profit organizations subsidized by the Flemish Government; local Public Centres for Social Welfare (*Openbare Centra voor Maatschappelijk Welzijn, OCMW*), which are official local welfare bodies; and organizations that represent the most vulnerable users, will be involved in the process. According to the Minister, good quality, accessible legal aid requires close cooperation between lawyers and social workers. The Minister will therefore consider how first-line legal aid should be positioned within general welfare. This will probably have an effect on general frontline services exercised by non-legals within the Houses of Justice.

¹ See previous national reports

According to recent research, this general frontline service within the former justice department has been dismantled in favour of the advocates.

3. Early intervention: a research project

Inspired by the policy statements of the Flemish Minister of Welfare and aiming to focus more attention on early intervention, a project was set up between two partners of the commission for legal aid in Louvain: private lawyers offering aid and the CAW. The project was studied by the University of Antwerp using different research methods, such as participative observation, interviews and focus groups (triangulation). The project aimed to provide legal aid from private lawyers in two different community centres (CAW), one in Tienen, a small town in a rural area, and one in Louvain, a university city, both of which work with vulnerable people. Some of the consultations were held with social workers present, others without. These social workers worked with the clients on a daily basis, while the private lawyers were available for consultation every 14 days for about 2 hours.

The project was conceived after evidence was found to suggest that first-line aid from private lawyers was more often provided to the middle class people rather than the most vulnerable. The project thus aimed to inform and advise more vulnerable people about legal issues within a social setting. Based on the literature, one might describe this way of proactive legal aid service as ‘peripatetic outreach’ or ‘inreach’,² in the sense that private lawyers attend locations where vulnerable people often meet each other. The community centres co-exist alongside regular welfare organizations and have developed an appropriate method to reach vulnerable people, referred to as ‘presence theory’³ or ‘basisschakelmethode’ (basic chain method).⁴

² V. STIMSON, G. EATON, T. RHODES & R. POWER, “Potential development of community- oriented HIV outreach among drug injectors in the UK”, *Addiction* 1994, 160111; T. RHODES, “HIV outreach, peer education and community change: Developments and dilemmas”, *Health education journal* 1994, 92-99. See also S. BEELEN e.a. verwijst men naar deze indeling S. BEELEN, S.BEELEN, J. DE MAEYER, C. DEWAELE, H. GRYMONTREZ, C. MATHIJSEN, *Reach Out! Praktijkboek voor outreachend werken*, Lannoo Campus, Leuven, 2014, 23-26. see also for the distinction between different forms of outreach : L. VAN DOORN, Y. VAN ETTEN & M. GADEMAN, *Outreachend werken. Handboek voor werkers in de eerste lijn*, Uitgeverij Continho, Bussum, 2008, 21 en 23.

³ A. BAART, *Een theorie van de presentie*, Boom Uitgevers, Den Haag, 2011, 918p.

⁴ H. BAERT & A. DROOGMANS, *Bind-Kracht door basisschakelmethode. Een opstap in armoedebestrijding*, Lannoo Campus, Tielt, 2010, 182.

Private lawyers normally provide consultations in different settings across a judicial district, for example, at the courts, the House of Justice, or local public welfare centres. These services are more reactive, and are usually used by middle class people. During these short consultations, legal issues will be handled (+/-10 minutes), but only practical legal information is given, sometimes more elaborate, at other times not, with the offer of only initial brief advice, and no follow-up. Of the referrals, 90% are to a private lawyer on the second line, if the client needs to make further contact with a counterpart, or requires a letter, or when the first-line lawyer is not sufficiently familiar with the legal matter.

Private lawyers have no knowledge of social welfare organizations in the case of social problems within a legal context, and do not refer clients to social welfare organizations or other socio-legal aid services, such as those offered by unions, housing unions, consumer organizations or ombudsmen. These organizations often work with vulnerable people or a mixed public and provide a social space where intake can be done by social workers or by lawyers (e.g. OCMW and CAW)⁵. These lawyers provide legal aid for clients by supporting social workers when their clients are confronted with legal issues. These lawyers are familiar with social issues as well. They not only provide legal information and advice but also assistance, mediation and representation.

During the project, it became clear that not every private lawyer felt at ease and often lacked the basic attitude required. In this environment, it is not necessary to be a brilliant private lawyer but to be a 'human being'. It is possible to characterize private lawyers as somewhat distant, mostly problem-focused, behaving more rationally, looking for the objective facts and interpreting these facts within a legal framework (atomic). Primarily, they wish to intervene immediately and see themselves as advocating on behalf of the clients (the advocacy model, according to Galowitz).⁶

⁵ The lawyers working in these organizations have a law degree but are not members of the bar. Lawyers who are member of the bar will be named in this presentation as 'private lawyers'. The term 'lawyers' as such refer to the persons who have a law degree but are not members of the bar.

⁶ P. GALOWITZ, "Collaboration between Lawyers and Social Workers : Re-examining the Nature and Potential of the Relationship", *Fordham Law Review* 1999, 2131-2132. see further : J. AIKEN en S. WIZNER, "Law as Social Work", *Journal of Law & Policy* 2003, 63-82; R. HYAMS, G. BROWN & R. FOSTER, "The Benefits of Multidisciplinary Learning in Clinical Practice for Law, Finance, and Social Work Students : An Australian Experience", *Journal of Teaching in Social Work* 2013, 159-176; V. RIZZO, D. BURNES & A. CHALFY "A systematic Evaluation of a Multidisciplinary Social Work-Lawyer Elder Mistreatment Intervention Model." *Journal of Elder Abuse & Neglect* 2015, 27, 1-18.

In the community centre, the private lawyers have direct contact with clients around a table, where they might drink coffee and talk about everyday life issues. Private lawyers normally hide behind their desks, but in the centre they had more space and time to not only build formal but also informal contacts. This contact created less distance and more proximity. The presence of the private lawyers also led the clients to trust them more, which they considered was more important than a confidential or private conversation. The process was about building an understanding or even a relationship. This understanding meant more to the clients than the lawyers simply helping them to rationalize the legal questions or problems. Their daily life issues were not only legal problems, but often social problems. The context was of importance, whether it was a legal or social. In fact, both contexts could be intertwined, with even a small legal question potentially containing various legal sub-problems, hiding legal complexity within a social context or vice versa.

The presence of the lawyers even changed the attitude of the social workers to the law. Although social workers are often the first to face the legal problems of their clients, they do not generally regard these problems as purely legal and consider the issue can be addressed through social work.⁷ A study by Michael Preston Shoot⁸ revealed that social workers considered law to be a tool for resolving issues, challenging inequality, protecting people at risk and meeting their needs. Nevertheless, while final year social work students reported less anxiety about using and keeping up to date with the law, their levels of anxiety remained high. As law has become such a central feature of contemporary social work practice, the students were particularly concerned about how to keep up to date, and how to ensure that the information they provided was accurate.

At the same time, the social workers in the project used different methods to work with clients. In contrast to the private lawyers, they were client focused, sought more proximity, built up relationships, worked within the life world of the clients, were more contextual, more present, and as Galowitz stated, they tried to act in the best interests of the client, which is not always to the immediate benefit of the client (best interest model). In the

⁷ J. Aiken & S. Wizner, 'Law as Social Work', *Journal of Law & Policy*, 11: 63, 2003, 63-82

⁸ M. Preston-Shoot & J. Mckimm, 'Exploring UK medical and social work students' legal literacy: comparisons contrasts and implications' *Health and Social Care in the Community*, 2013, 1-12. M. Preston-Shoot & J. Mckimm, 'Perceptions of Readiness for Legally Literate Practice: A Longitudinal Study of Social Work Student Views.' *Social Work Education : the International Journal*, 2011, 1-19.

community centres, legal issues were normally referred to in-house lawyers who remained at a distance (it was necessary to make an appointment, and the lawyers only provide legal information and refer people to other legal services). During the project, however, social workers had direct contact with the private lawyers, with whom they were previously not familiar and often had bad experiences.

We can also make a distinction between consultations with and without social workers. Social workers are well trained in communications skills, they are familiar with the daily life problems of their clients, they are able to translate their clients' experience of the world to the lawyer, who functions in a legal system distinct from that world. In doing so, the social workers create a bridge between these life and system worlds. While attending these consultations, they also obtained more knowledge about the current legal issues, as they had lacked basic up-to-date legal information. They became more aware of how to detect legal issues; more aware that they could detect the different legal issues at a very early stage in social contact with the client.

The clients of the community centre were mostly vulnerable people, some had psycho-social problems, some were former prisoners, others were homeless, in poverty, or had a weak network of support. Due to the presence of the lawyers, and after realizing that the same lawyers would return and thus showed some commitment, people started to think more about and to talk about legal issues in their lives (family issues, debt problems, housing, etc.), and thus gained greater legal awareness. In this way, they came to regard the private lawyers not merely as professionals at a distance, but as human beings, and became less afraid of them. Many clients had already had an appointment with a private lawyer at no cost, but had experienced a lot of difficulty in trying to contact them, as well as problems understanding them due to them communicating in difficult legal language.

Referring to the results of the research some features of a proactive legal service based on outreach could be listed⁹.

- 1) *Interdisciplinarity*: legal and non-legal organizations should work together in a formal and informal way

⁹ see S. FORELL & A. GRAY, 'Outreach legal services to people with complex needs: what works' *Justice Issues*, paper 12, October 2009, 1-23.

- 2) They are located in the same areas or places as vulnerable people
- 3) Flexibility: urgent matters, time, space
- 4) Costs: seems more expensive, but can save costs created by X-inefficiency on the second line, need for specific skills by the lawyers (training)
- 5) Monitoring: how to improve outreach services (e.g. supporting social workers with legal tools and more complex cases for lawyers (see CAW Brussels project, not evaluated yet)
- 6) *Intradisciplinarity*:
 - a) social workers should obtain more legal skills to detect legal issues, and even provide basic legal advice and refer or orient the client in a more guided way
 - b) lawyers should learn more communication skills and other methods, such as ‘multidirected partiality’ to inform and advise clients¹⁰. As Coleman concluded:

*Attorneys typically do not receive much instruction in counselling or interacting with clients, and so these social work skills are critical. This observation is especially true because it is often necessary to understand the psychological aspects of the clients’ legal problems in order to help them. Indigent clients usually have a variety of problems that contribute to, or in some way affect their legal situations.*¹¹

Conclusion

The project succeeded in bringing law into the daily lives of vulnerable people in a community centre. Two professional fields made contact with each other in what we would call a ‘socio-legal practice’. Such socio-legal practice might be characterized as: professional proximity (rather than distance), responsibility (to respond adequately to the social and legal issues), communication (to be agents of transformation¹²), to be legally present (in time and space, and intervene if necessary).

¹⁰ I. BOSZORMENYI-NAGY & B.R. KRASNER, *Between Give and Take : A Clinical Guide to Contextual Therapy*, Brunner-Routledge, New York, 1986, 432p.

¹¹ B. COLEMAN, “Lawyers Who Are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients”, *Journal of Law & Policy* 2001, 139.

¹² C.R. ALBISTON & R.L. SANDEFUR, ‘Expanding the Empirical Study of Access to Justice’, *Wis. L. Rev.* 2013, 101, 104, 111 en 118.

4. First-line legal aid in Wallonia

The Minister of Youth Aid, the Houses of Justice, Sports and the Promotion of Brussels to the Federation Wallonia-Brussels, Rachid Madrane (PS, Socialist Party), also responsible for legal aid, declared in his budget for 2016 that he would leave the existing organization of legal aid on the first line in place. Recently, on 12 October 2016, a new Act was promulgated, such that the commissions for legal aid continue to exist but in a smaller form.¹³ They are now tasked with only organizing consultations done by private lawyers, and no longer have to coordinate and promote cooperation between the other organizations that provide legal aid, or help to facilitate a referral to specialized organizations or inform citizens about eligibility criteria, especially in relation to the most vulnerable groups. While in the former legislation, other organizations providing legal aid and public welfare centres were members of the commissions, after implementation of the Act, the commission will only consist of private lawyers. These commissions will become part of a broader network around the Houses of Justice (see former national report).

This new Act also regroups the different needs of people around six missions or targets in their search for assistance: first-line legal aid, social assistance, psychological help, parental care (*l'aide au lien*), assistance with communication (*l'aide à la communication*), assistance with respect to the implementation of sentences (*l'accompagnement à la mise en œuvre*) and assistance with the follow-up of sentences, such as with probation (*au suivi de décisions judiciaires*).¹⁴

There are two fundamental principles that legitimize the new Act. Firstly, these missions are designed to benefit the people in need rather than the supply side. Every judicial district must realize these six goals and every mission should be operationalized by different partners. In order to succeed in these missions, three consultative fora have been set up: 1) commissions set up around themes (*les Commissions thématiques des Partenariats*); 2) commissions in every district based on partnerships (*les Commissions d'arrondissement des Partenariats*); 3) one commission, focused respectively on the perpetrator, the victim and other categories not belonging to the former two (*la Commission communautaire des*

¹³ Décret relatif à l'agrément et au subventionnement des partenaires apportant de l'aide aux justiciables *Parl. St. Fr.Parl.* 2015-16, nr. 330-5.

¹⁴ *Parl.St. Fr.Parl.* 2015-16, nr.330-3, 3-4 (Verslag).

Partenariats). A second important principle is the form of funding. Allocations will not be based on employment, but will be a function of the outcomes, in accordance with the needs of the clients involved.¹⁵

This new Act reflects an integral approach between different social and legal organizations based around thematic commissions, commissions on the district level and one central commission. However, the question remains whether this Act will improve the alignment between the different legal aid organizations.

5. New thresholds in second-line legal aid

Second-line legal aid for people who cannot afford a private lawyer to represent them in court still remains the authority of the federal state. In his policy statement of 17 November 2014, the Minister of Justice announced a reform of the system, by reducing the legal aid budget by 10% and especially the fee nomenclature. The Minister of Justice, Koen Geens (CD&V Christian Democrats), had planned to double the client's own contribution and to maintain a closed budget envelope. The Flemish Law Society and its French-speaking counterpart had elaborated a well-balanced nomenclature, taking into account an hourly rate of €75. Instead, the Minister adopted this nomenclature within the system of a closed budget, which means that some legal areas, such as immigration law, will be underfunded. The lawyers were not willing to accept this move and protested on 1 June 2016 and new protest actions were also organized. According to the private lawyers, this Act is yet another attempt to impede access to justice, as legal costs had increased in 2007 and a VAT of 21% on advocates' fees was introduced in 2014. More recently, court fees have also been adjusted and, in some cases, these fees have more than doubled.

What the private lawyers have feared, has become reality. Since September 2016, it has become harder for citizens to access legal aid. The legal aid Reform Act of 2016 introduced new eligibility criteria. While in the former Act one had to prove a lack of income, now, before being granted legal aid, it is necessary to prove you lack 'sufficient means', which is a broader concept than income. The legislator understands under 'insufficient means': income, real estate, resources/benefits from movable and immovable assets, capital, all

¹⁵*Parl. St. Fr. Parl. 2015-16, nr.330-3, 4 (Verslag).*

benefits in general, or other signs of solvency will now be taken into account. Child allowance and the family home will not be taken into account.¹⁶

In addition to the income criteria, in the former legislation, if one belonged to a certain group, one was exempted from proving lack of income. Now these categories are considered as ‘refutable presumptions’ of eligibility that can be refused by a contrary decision of the bureau for legal aid. For that purpose, the bureau can request all necessary information from the requesting parties and even from third parties, such as government institutions¹⁷ and the tax administration. The only exception is to be a minor.

The new Act has introduced a fixed contribution of €20 for every assignation and €30 for every procedure, which should be paid by everyone applying for legal aid.¹⁸ The appointed private lawyer is only obliged to act if this contribution has been paid, except under three conditions: a) the person that has been granted legal aid belongs to a special category, such as minors, people starting a procedure concerning debt settlement, asylum seekers in relation to specific procedures such as asylum applications and detainees;¹⁹ b) paying €30 would in the case of an overload of procedures impede access to justice or lead to an unfair trial.²⁰ In this case, the bureaus for legal aid will record a list of all cases where an exemption has been granted. These lists will be sent to the regional Bar Associations and these associations will transfer them to the Ministry of Justice;²¹ c) finally, it is up to the private lawyer to decide whether or not they insist on collecting the contribution(s). They can waive the contribution but it will then be charged to the lawyer.²² This last option leads to a two-tier access to justice programme, depending on the philanthropic attitude of the private lawyer. Moreover, in contrast to the intention of the legislator, this will make access to justice more arbitrary.

¹⁶ Art 2 KB 3 augustus 2016 tot wijziging van het koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand, *BS* 10 augustus 2016.

¹⁷ Artikelen 1 § 2 en 1 § 3 KB 18 december 2013.

¹⁸ Artikel 3 KB 3 augustus 2016 tot wijziging van het koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand, *BS* 10 augustus 2016.

¹⁹ Criminal Cases (EVRM, BUPO), asylum procedures, debt cases.

²⁰ Art. 508/17 §4 en § 5 Ger.W.

²¹ Art. 508/17 § 5 lid 2 en 3 Ger.W.

²² Art. 508/17 § 3 Ger.W.

For the private lawyer, the timeframe to submit an application is very limited. If the application requires more information, or documents are missing, the private lawyer only has 30 days to complete the procedure and, if not, this provides reason not to grant legal aid.

The rules governing the termination of the grant of legal aid have been reformed²³ and reflect the goal to restrict access to legal aid.²⁴ The bureau for legal aid can terminate *ex officio*, or on request of the private lawyer, the legal aid granted, if: a) the person no longer meets the eligibility criteria; b) there is a lack of cooperation; c) the private lawyer reports that further intervention will not be of any use or add more value to the case. The office will inform the client, who can then respond, after which the bureau for legal aid will make a final decision. In the case of a negative decision, the client may appeal to the labour court.

In addition, while former legislation offered no real opportunity to reconsider the level of compensation of the private lawyer in the case of a successful intervention, the new Act allows the private lawyer to request an assessment by the office for legal aid. The underlying principle is: if the resources had been available at the time of the application, the client would not have been granted legal aid. There are some limits regarding the amount that can be requested.²⁵

A final, very important, change is the nomenclature – concerning the allocation of points to determine the lawyer's compensation – as mentioned above. The value of a point has now been decreased, due to a reduction in resources. While the Bar Associations themselves proposed a new nomenclature based on an hourly rate of €75, the Minister adopted the nomenclature but without increasing the allocation budget. The Minister stated that he supports the claim of a €75 hourly rate, but cannot promise anything.²⁶ Paradoxically, he regarded the discussion about a fixed or open budget as semantic, while referring to the permanent increase in the allocation budgets over recent years.²⁷ In contrast to his statement, however, the value of a point has remained the same over the same period, or

²³ Art 508/18 Ger.W.

²⁴ *Parl.St.* Kamer 2015-16, nr. 1819/001, 17 (M.v.T.).

²⁵ *Parl.St.* Kamer 2015-16, nr. 1819/001, 19 (M.v.T.).

²⁶ *Parl.St.* Kamer 2015-16, nr. 1819/003, 43 (Verslag).

²⁷ *Parl.St.* Kamer 2015-16, nr. 1819/003, 32 (Verslag).

has even decreased.²⁸ The Court of Auditors explained that there is no model or indicator to estimate the growth of the budget. The Bar Associations are very frustrated with this.²⁹

In addition to free access to a private lawyer, access to aid for other legal costs can be obtained from the bureau for legal costs (court chamber). While in the former legislation, the decision of the office for legal aid was *a proof* of insolvency, the new Act confirms that it is *the proof* of insolvency, and no other steps have to be taken.³⁰

Due to an increase in the number of new applications, and in order to pay the private lawyers a decent fee, some members of parliament have introduced a bill to establish a trust fund, which would require everyone who loses their case to make a special payment into the trust fund in the form of a fine. To date, this bill has not become law³¹.

6. Conclusion

In summary, it would be an understatement to say that access to justice in Belgium has become more complicated. New policy implementation will be decisive. Whether these actions, especially on the second line, will be in favour of the citizen who is seeking justice is doubtful. Nevertheless, there are some positive aspects: more integrated first-line legal aid in Flanders will be developed, and there will be new integral structures for the Walloon legal aid schemes. A good legal aid system presupposes preventive action. Furthermore, collaboration between legal professionals, private lawyers (advocates) and social welfare organizations may be an important step along a path that better reaches out to and assists the most vulnerable in a timely manner and before their 'justiciable problems' escalate.

²⁸ See S. GIBENS & B. HUBEAU, *National Report Belgium*, ILAG Conference Edinburgh 2015, 19 p. <http://internationallegalaidgroup.org/index.php/papers-publications/conference-papers-reports/category/15-national-reports>: het punt bedroeg in 2011-2012, 2012-2013 en 2013-2014: 25,76 €. Voor 2014-2015 : 25,02 €. In 2010-2011 bedroeg de waarde van het punt nog 26,91 €.

²⁹ *Parl.St.* Kamer 2015-16, nr. 1819/003, 55 (Verslag, bijlage hoorzitting).

³⁰ Art. 667 lid 2, 3 en 4 Ger.W.

³¹ Wetsvoorstel tot oprichting van een fonds voor de juridische tweedelijnsbijstand ingediend door de dames Sophie DE WIT en Sonja BECQ, de heren Gilles FORET, Philippe GOFFIN en Raf TERWINGEN en mevrouw Goedele UYTTERSROT, *Parl.St.* Kamer 2015-16, nr. 1851/001.; Adv. RvS nr. 59.626/3 en nr. 59.627/3 24 juni 2016, *Parl.St.* Kamer, 2015-16, nr. 1851/005, 13 p., *Parl.St.* Kamer 2015-16, nr. 1851/006 Adv. RvS nr. 60.348/3 van 3 november 2016, *Parl. St.* Kamer 2015-16, nr. 1851/007, 5 p.