

1. Introduction

Before going into detail on the legal aid system in Belgium, I would like to provide some general data on Belgium such as the type of legal system, the population, the GDP and average Annual Salary.

2. Type of legal system

Belgium is a hereditary constitutional monarchy. As in many other countries the constitution provides for the separation of power between the executive, the legislative and the judicial branches of government. A distinction has to be made between the federal, the regional and the local levels of power. The federal state consists of the federal parliament and the executive power of the King, represented by his ministers. At the regional level a further distinction has to be made between communities and regions. The communities (Flemish, French- and German- speaking) have authority over cultural matters, education, use of language and "person-related matters", such as health policies, policies related to disabled persons, and the protection of the youth. The regions (Flanders, Wallonie and Brussels) deal with socio-economic matters such as urban planning, housing, environment, economic development, public works and transportation. Belgium is a mix of federal and confederal elements¹. Belgian has known many constitutional reforms and since the last elections of June 2010 a new federal government could not be installed because of a large disagreement on a further constitutional reform between the winning parties, especially the socialist in the Walloon part of Belgium and the nationalists at the Flemish side.

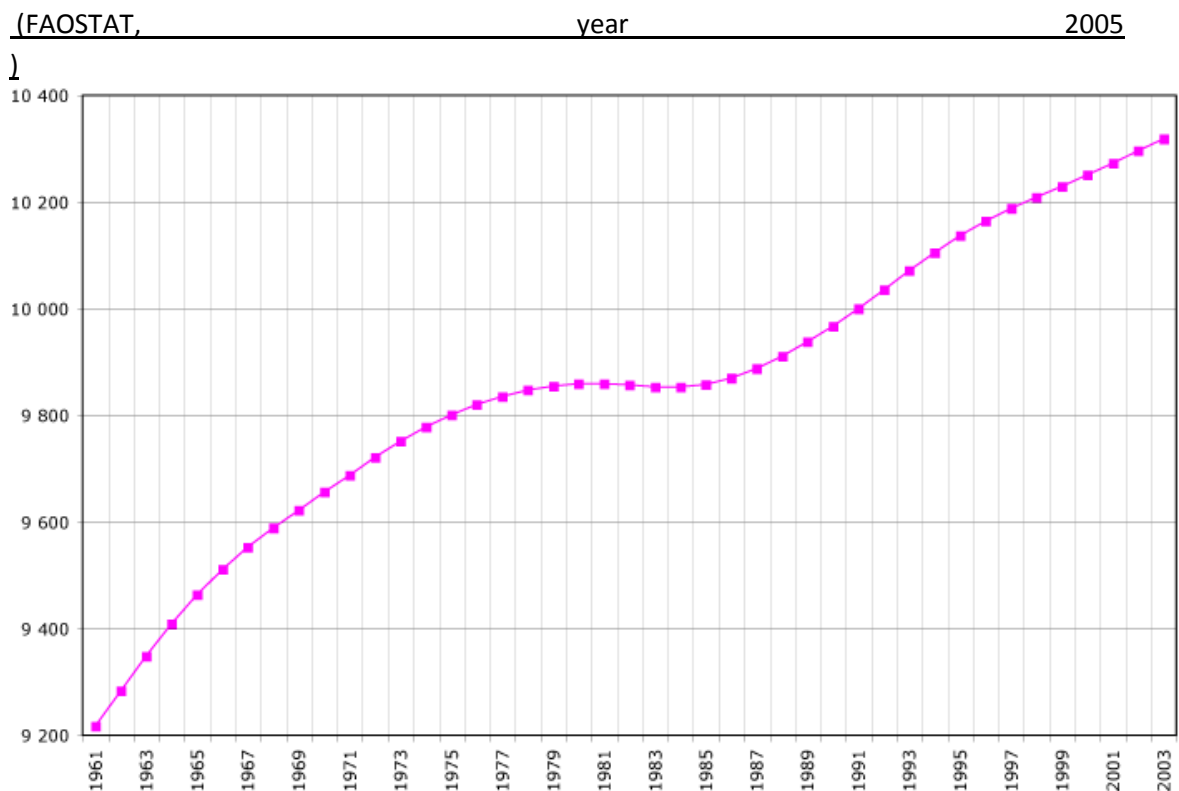
Referring to the legal aid system, the judicial code where the legal aid act 1998 has been incorporated, is federal authority. But housing organizations, social welfare organizations who also provide some legal services are regional authority. It complicates the collaboration and as will be explained further in this national report, between mostly the traditional legal aid providers as the advocacy and the preventive and first line organizations of the welfare organizations. And although Justice is a federal authority, in 2002 the National Bar Association has split up into the Flemish Bar Association (FBA or OVB) and the Association of the French- and German Speaking Bars (AFGB or OBFGB). Each of these professional bodies

¹ F. VAN LOON, G. FRANSSSEN, S. GIBENS and K. VAN AEKEN, "Belgium" in H. KRITZER, *the Legal Systems of the World. A Political, Social and Cultural Encyclopedia*(Vol. I), ABC Clio, Santa Barbara, 2002, 144-150

has a public character and has its own councils. Currently there are 15 500 Belgian Lawyers of whom 8 900 are Dutch-speaking lawyers².

3. Population

Belgium had a population of 10 839 905 people on January 1st, 2010. Since 1963 the Belgian population has grown constantly.



The following data seem to be of interest for a national report on legal aid since many of the people granted legal aid have proven to be living in precarious circumstances and experience many social risks. Recent Belgian poverty studies have revealed that 3,65% of the working population earns a living from minimum wages. 2.1% receives social assistance, 4, 73% has a minimum income from elderly scheme . Other studies researching the impact of social class of origin on the occurrence of a selection of social risks have presented the following data :

² J. STEVENS, *Independence of Lawyers and their governing bodies in Belgium*, <http://www.advocaat.be/EnglishPage.aspx?genericid=117>

Unemployment : 6, 85 %, ill-health : 6, 57%, living, in a jobless household : 8, 60%, single parenthood 7, 60%, temporary unemployment : 8, 27% and low-paid employment 8, 69% present.

4. GDP and average Annual Salary (Full Time Work)

According to the world bank's World Development Indicators, Belgium has a GDP of 471, 1 Billion Euro (GBP 2009).

Although gender awareness is common sense, the Institute for Equality between Women and Men has recently published a table that shows that there is a real gap between the Average Annual Salary (full time work) ³ between man and women.

	2002	2003	2004	2005	2006	2007
Women	29.832	28.386	30.282	31.317	32.616	33.625
Man	34.590	33.616	35.675	36.819	37.175	38.018
Wage gap	14%	16%	15%	15%	12%	12%

Source: ADSEI, Enquête naar de Structuur en de Verdeling van de Lonen(in euro) and referring to the wage gap (2002-2007), these figures are the total wages and premium

5. Administration of Legal Aid

In Belgium, legal aid was and still is mainly the responsibility of the legal profession. Although the nineteenth century emphasized charity as a cornerstone of legal aid, it has lasted until 1993 before legal aid has become a fundamental right and in 1998 an act on legal aid was promulgated. Since the implementation in 2000 of the 1998 Legal Aid Act, people on lower incomes have been entitled to an advocate free of charge. This is a formal right and legal criteria are based on equal eligibility (means and merits test). This change should be regarded as a mere formal update of a legal aid system that has in fact been existing for many years.

³ X. *De loonkloof tussen mannen en vrouwen in België*: rapport 2010, Instituut voor de gelijkheid van vrouwen en mannen, 2010, 12

6. Different legal aid schemes

The Bar plays an exceptional role within the Belgian legal aid system. First-line legal help is provided within the framework of the Commission for legal aid. This Commission operates under the auspices of the Bar. The actual counsel is provided by lawyers. Second-line legal aid, and assistance or representation inside and outside the court, is entrusted to the Bureau for Legal Aid, that is established within the local bar (28 in total). No salaried lawyers are deployed in the legal aid system. On the other hand, the decision regarding legal aid (free administration of justice) is left to the court itself. However one should not lose sight of the fact that, in Belgium, the Bar does not hold a monopoly on legal counseling services. In fact many other players are active in the legal aid and the commercial legal aid markets.

a) The Commission for Legal Aid

The commission for legal aid was the answer of the federal government to the divided and unstructured supply of the first line legal aid⁴. There were many suppliers, but no central body existed to help to coordinate the first line legal services or to improve collaboration between the several service providers. At the same time the bar association was given the opportunity to strengthen its position on the first line. The primary task of the commission is to organize the first line legal aid of practicing lawyers. And the policy of the commission is merely influenced by topics that belong to the jurisdiction of the law society as ½ of the members are lawyers appointed by the local dean. The other members are appointed by welfare organizations or public social organizations. While the commissions are subsidized by the federal government (department of Justice), welfare organizations are mostly financed by the governments of the local states (Flemish or the Walloon). This situation complicates the working out of a general policy on the first line. And many other organizations, presented on the legal services market are not able to become member, (like unions or consumer organizations) because of their legal structure.

Not only is there no general body that coordinates the different commissions, but also no general policy exists. Every commission works on its own in its own district and acts as one sees fit.

The Commission is composed of members of the local bar (half of the representatives of the commission), members of the local social welfare organization (25 percent) and members of organizations providing legal aid like consumer organizations, tenant organizations (the other 25 percent). The Commission is obliged to assemble 4 times a year. The Commission is led by

⁴ J. VAN HOUTTE, W. VAN WAMBEKE, & E. DELANOEIJE, *Rechtshulp en rechtsinformatie*, Brussel, FDWTC, 1995, 60

a president, always a private lawyer. The act does not explicitly mention where these meetings should be held. In an other act it is stated that the House of Justice (containing probation officers, restorative justice officers, etc.) has to put conference rooms at the Commission's disposal. But a place for a permanent secretariat has not been provided. In many districts the permanent secretariat is housed in the offices of the local bars.

In every district (there are 27 districts in Belgium) the Commission has the duty to organize the counseling by private lawyers. The Commissions decide where these free consultations will take place. Mostly the consultations will be held in the Houses of Justices or in courts of the Judges of the Peace or in local public welfare organizations . 90% of the accredited budget has to be spent on these consultations and the paying of the private lawyers. Because of the fragmentation of the legal advice market and the lack of insight in what all these actors are dealing with, the Commissions support the coordination and collaboration between the different legal aid centers. The 1998 act even provides the possibility to make arrangements on the way these centers could cooperate. It includes the spreading of information about legal aid to the citizens especially appealing to the weakest groups in society. Last but not least the Commission takes notice of its own annual report and that of the Bureau for Legal aid. The Commission is entitled to advice the Minister of Justice on legal aid matters. However this advice is not stringent to the Minister.

The provisions on the first line are restricted to information and advice. If a person seeking justice needs more support, like writing a letter or taking contact with the adverse party, this has not been provided within the legal framework of the 1998 Legal Aid Act. This is in contrast with the provisions provided by the welfare organizations that are devoted to special legal areas such as housing, debts, etc. These organizations open files and try to solve the legal problems by writing letters or mediation. They provide a large scope of mostly specialized legal services, although limited, but in a continuous way. Some welfare organizations were providing general legal advice, as one of their tasks beneath other welfare goals. These organizations have remarkably reduced their legal advice provisions because of the federal authority of the legal service commission to provide and coordinate first line legal aid for especially private practitioners. No data are available on the way welfare organizations in Belgium, and especially those focusing on first line legal aid, function (as mentioned in previous national reports).

b) Legal Assistance: The Bureau for Legal Aid

While the first line legal aid is eligible for every citizen, legal assistance on the second line is only eligible after a means and merits test. If someone is not entitled to second line legal aid, he has to pay the lawyer himself or if he is insured, the legal costs can probably covered by his legal expenses insurance.

The bureau for legal aid that is installed in every legal district, and is embedded within the local bars, handles the requests for legal aid. Since 2005 the federal government has been subsidizing the costs of the organization, whereas the 1998 Legal Aid Act diminished a percentage of the budget of fees, accredited for the paying of the lawyers. Every bureau has to organize itself and determines its own policy.

There are three ways to apply for legal aid. One can consult a lawyer who will make a request to the bureau, one can be referred by a first line organization or one can make a personal request by coming to the bureau.

In special areas like criminal law cases, the bureau will grant legal aid on the request of the investigating magistrate or the criminal court. Since the Salduz jurisprudence the assistance of an advocate during police interrogations has become a hot item. A special duty counsel scheme has been set up in order to represent the suspect before the investigating magistrate. The Flemish Bar Association is working on a special computer program to organize the assistance of an advocate during the first interrogation in police stations. The computer system will enable policeman to call one single telephone number where he will be informed of the lawyer who will attend the interrogation. The operator subsequently will convoke the advocate. The Flemish Bar Association hopes that the system will operate from June 2011 onwards.

7. Financial eligibility

7.1. Legal framework

The 1998 act provides minimum income criteria. Summarized :

a.

A single person may not earn more than € 878,00 a month to be entirely entitled to a free lawyer.

A single whose income lies between € 878,00 and € 1 128 can obtain the assistance of a lawyer after paying a small amount of his fee. How much that will be is not prescribed by law and can be freely determined by the president of the bureau. Depending on the income, the contribution is situated between € 50 and € 125.

b.

If the income of a married person, cohabitant or a single with depending persons exceeds € 1 128 net a month raised by € 145, 16 € for every depending person (like children, housewife (man)), that person is not entitled to obtain completely free assistance. An income between € 1 128, and € 1377 ,00 net per month raised by €145, 16 for every depending person, gives right to partly free assistance. Regarding the particular situation of the single persons, the president of the bureau will determine the fee the citizen has to pay.

c.

The president can also take into account the debts of a person of his family, only if these debts are not due to the person seeking justice. It is because of a sudden unexpected situation that the person is not able to fulfill its obligations.

Only in 21% of the demands, the above mentioned eligibility criteria will be applied.

d.

If a person can prove in every possible way that he

- is living of social benefit (OCMW)
- is a handicapped person
- an aged person living of a social benefit
- a person living in social housing
- a juvenile
- a foreigner (asking for asylum)
- excessive debts

the president of the bureau will immediately appoint a lawyer.

Detainees and mentally –ill persons will obtain a free lawyer till the moment the lawyer who is sought to defend the person can prove that the designed person does earn sufficiently to pay the lawyer.

78, 99 %the people who are granted legal aid belong to this category.

7.2. Some data

Due to the different policy of the Flemish Bar Association and the French- and German Speaking Bars it is hard to find some comparing data. The data I will present here, are only applicable on the Flemish legal aid schemes⁵.

53% of the people who have applied for legal aid are between 19 and 40 years old (steadily these group has increased from 45% in 2004-2005 over 50, 31% in 2007-2008). Mostly men have asked for the assistance of a lawyer (65%). This situation is rather new since in 2005-2006 57, 64% and even in 2007-2008 65, 04% of them were women. Most of them have the Belgian Nationality. 25% are from outside the European Union.

Only 4 % of the granted population has to pay a small contribution which differs between 25 € -125 €. This is of course not so surprising if one notices that only 21% of the eligibly people have to prove their income, others are entitled because of their capacity of because they can prove to live from social benefits.

No data is available on multi-problems and clusters. Most cases that are dealt with in 2009-2010 are criminal cases (22%), followed by 19% juvenile files. Of the total amount of 93 142 dealt cases, 16 174 are asylum and 12 049 are family matters. Most of the cases ended with a final sentence or decision. Only a small part of 4% has been settled and in 8% the person seeking justice has dropped the case. Comparing to the previous years, this is rather a constant tendency.

8. Scope of legal aid

The income criteria are determined by the government and have been increased several times which is of course in the interest of the clients, although no simulation has been made for the consequences of the increases. A simulation made by the university of Antwerp has pointed out that the increase of the eligible criteria of 14 %, meant the double of the population of the clients. 20 % of the Belgian household are now eligible⁶.

⁵ Data (see also nr. 10 statistics) from Orde van Vlaamse Balies, thanks to Elke Steylaerts and Kati Verstrepen

⁶ C. DRIESEN, G. FRANSEN, S. GIBENS & J. VAN HOUTTE, *Naar een meer performante rechtshulp. Een rechtsvergelijkende en rechtssociologische studie*, Brussel, Larcier, 2006.

Compared to our neighboring countries, progress has been made, but Belgium Legal aid is still no major issue within the Justice Department . Referring to the general spending of legal aid per capita, England & Wales are at the top with 24 €/per capita, followed by the Netherlands with 20 €. Belgium only spends 2.8 € per capita.

9. Legal aid expenditure

The remuneration of the lawyers remains a hot issue. Although there is a continuous increase of the budget on legal aid, no one seems to have calculated the impact on the value of the point given to the advocate as a reward. The minister of Justice has set up a list of legal affairs and accredits these cases by points. Every year the local bars calculate the points and divide the budget by the gathered points. In other words there is no consistency in the value of a point.

The (closed) budget for 2006-2007 contained 52 641 000 €. One has to take into account that the original budget was 47 240 000 €. Due to the increasing amount of dealt cases, the value of a point given to the advocate as a reward would have been decreased to 21, 84 instead of 24, 11 the years before. The interim-government has voted an additional budget of 5 731 000 € to stabilize the value of the point. In 2008 the government has increased the budget to 67.0450.000 €⁷. It has generated the highest value of a point since the introduction of the 1998 Act. Although the budget for 2009-10 was 68 022 000 € the value of point decreased to 25, 39 €.

At the same time the amount of cases has multiplied with 363% in a period of ten years. The different Bar Associations even estimate that next year due to the economic crisis, the amount of dealt cases was even higher, namely 178 056 (2009-10) , 17 000 more than in 2008-2009.

Every year the Flemish Bar Association and its French counterpart organize “cross-control”. It means that the Flemish speaking local bars control the French speaking and vice versa. It gives the opportunity to check by way of sample (approximately 50 till 100 files in every local

⁷ It is striking that the *study on Procedural Rights : Existing Level of Safeguards in Member States – 2008 update* referred to 54 220 000 € for criminal legal aid in Belgium and consequently concluded to 6, 8 € per habitant for criminal legal aid while the total budget for legal aid, civil cases and other legal areas included, in 2006-2007 was 52 641 000 € and 56 491 981, 80 € in 2008- 2009. Taru Spronken has revealed that this information is based on a questionnaire filled in by the Justice Department. This has been an aberration from the part of the Justice Department.

T. SPRONKEN “Rechtshulp en advocatuur: een blik van buitenaf” in *Van Pionier naar onmisbaar. Over 30 jaar panopticon*, W. BRUGGEMAN e.a. (ed.), Maklu, Antwerpen-Apeldoorn, 2009, 272 (xxvii).

bar) if the local bars organize legal aid in the same way. Unless the French speaking Bars dealt with less cases (80 155) in 2008-2009 they have received more subsidies for intellectual performances, 1 259 084, 18 € than the Flemish bars who have closed 81 297 cases and received 1 135 882, 71 €. There is at the moment no real explanation for it, but asking the question remains rather tricky, because some people think that legal aid is one of the money transfers from the north part of Belgium to the South (Walloons), as it is more or less the same with social security budgets.

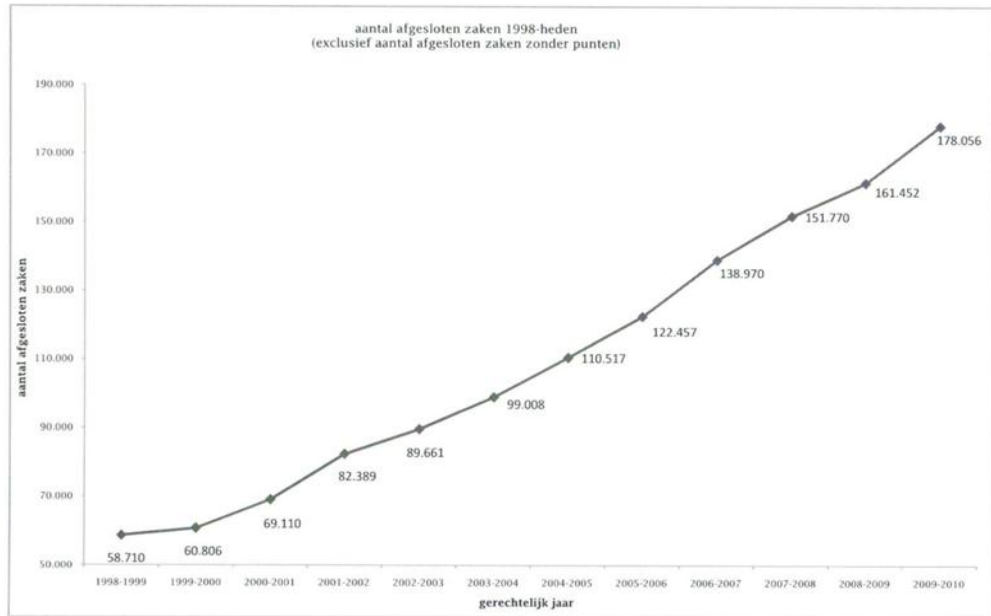
As a result one may conclude that it is hard to make a living of legal aid cases. Nevertheless many private lawyers are participating into the legal aid system and a part of their income depends on their legal aid work. While only 30% of the Flemish lawyers were registered (2 194 on 7 233) their amount has grown every year till 42% in 2009-2010 (3 800 on 9 057). It does not mean that all the lawyers who are enrolled, make their living with legal aid. Nor is there any relationship between the increase of demands for legal aid and the accession of lawyers.

Because of the low income lawyers can generate, questions arise on the quality of their work. Although one cannot generalize, it is a statement that no quality measures are available. Control will differ in every local bar. Recently the Antwerp Bar has tried to improve quality among the registered legal aid lawyers and has divided the registered lawyers into different sections e.g. family law section, criminal law section, asylum section, civil law section and social law section. All the registered lawyers have committed themselves to follow at least one or more courses in their sections or to attend some recycling days, licensed by the section. All reports on assigned legal aid cases will be revised by "correctors". These correctors, who are all specialists in the legal areas of the section will warn the head of section from the moment they detect some dysfunctions or even lack of quality in the performances of a lawyer. The president of the legal aid bureau subsequently can order a full control of all the files of the lawyer that are known to the legal aid bureau and can ask the local dean to convoke the lawyer before the local bar council. This council can decide to remove the lawyer from the register and to forbid him to perform legal aid cases.

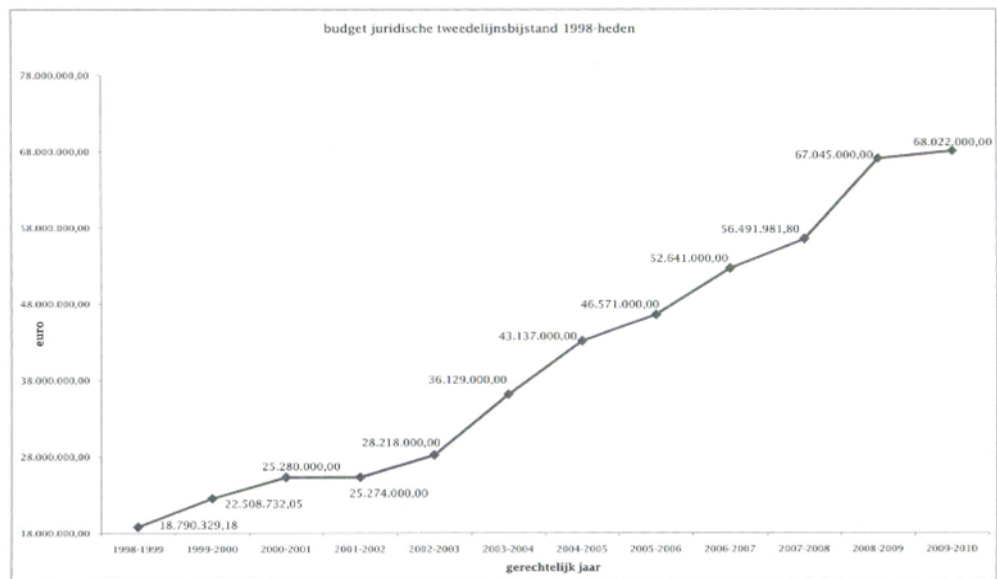
While the Bar Associations can produce some figures on the dealt cases and the remuneration, no real data are available on the demand side. Does demand equal the supply? No research has been done, in contrast with other countries like the Netherlands, England & Wales, Canada and New Zealand⁸.

⁸ See for an overview B.J.C. VAN VELTHOVEN & C.M. KLEIN HAARHUIS, *Geschillenbeslechtingdelta 2009*, Den Haag, WODC 2010.

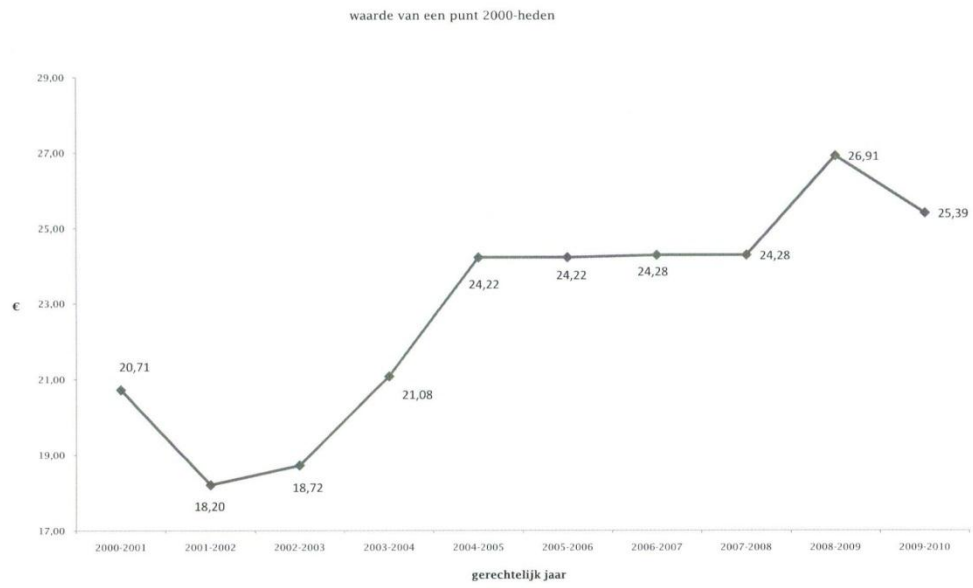
10. Statistics



Grafic 1 Evolution of dealt cases since the promulgation of the legal aid act 1998



Grafic 2 Evolution of the legal aid budget aid since the promulgation of the legal aid act 1998



Grafic 3 Evolution of the value of a point since the introduction of the legal aid act 1998