Dutch legal aid subsidy reconsidered

An evaluation study of legal reform and access to law

Summary

This study focuses on the effects of the Dutch Legal Aid Act, which came into force January 1st, 1994. Special attention is given to its first goal, which concerns access to law. The former Legal Aid Act, dating from 1958, had been criticised severely for alleged leniency in eligibility and for the inequality of the fees applicants had to pay for state-subsidised legal services. The new legislation aims both at a higher degree of selectiveness in eligibility and at greater equality. It prescribes several measures, including lowering income limits for entitlements to legal aid, raising fee levels, tightening substantive criteria for problems covered and improving controls on state-subsidies for legal services provided by private lawyers or members of state subsidised Legal Advice Centres.

From a rational choice point of view, all measures increase costs for applicants seeking legal services in order to solve their problems. The reforms aim at inducing applicants via their cost/benefit analysis in abstaining as much as is possible from seeking professional legal services for problems where these services are not required. Consequently, the reforms envisage a decrease in numbers of granted applications. But, as the Minister of Justice stated in his explanatory memorandum to the bill, access to justice is a fundamental right. Any increase in costs should not be a barrier in case of serious legal problems.

From an empirical point of view this means two questions are to be answered. First, did the new legislation cause a decrease in legal aid applicants? Secondly, is the legislation's effect on application levels consistent with the law's required preconditions, i.e. greater selectiveness and more equal terms?

With respect to the first question it can be concluded that during the first three years the number of cases in which legal aid was granted decreased by 38% in civil law matters and by 27% in penal law matters. To answer the second question, we embarked on the macro-micro link heuristic derived from James Coleman, which states that the macro social effects the law aims at, can only be understood as the result of individual choices in their problem solving strategies based on changed individual cost/benefit analyses. Individuals will experience the intended increase in costs only to the extent that professional legal service providers will behave in a consistent way as presupposed by the law. This heuristic made us look not only at the behaviour of the individual clients but also at the behaviour of the members of the new regional boards accountable for granting applications, the private lawyers and the members of the Legal Advice Centres. We found only moderate 'adverse supply effect', and these exclusively with respect to the members of the Legal Advice Centres.

With regards to the intended increases in selectivity, our findings indicate some abstinence from seeking legal services in cases of problems that could be dealt with without legal services, for instance tenant problems. However, we also see abstinence in cases which hardly can be solved without resorting to the law, for instance in the area of social security and, to lesser degree, in labour affairs. The first type of abstinence is consistent with the aims of the reforms, the second most probably is not. In terms of the intended equality in the cost/income calculation every applicant has to make, we also found mixed results. In contrast to the former regulation which favoured single persons with respect to the level of fees, the new regulation does not as can be concluded from the disappearance of inequality between single and married persons in recourse onto lawyers. But we found fee structure inequalities that probably will cause unequal access to law, especially for middle-income classes. In conclusion, we argue that these findings give grounds to consider the new legislation as rather successful, although certain shortcomings still seem to persist.