

Pro Bono Practices and Opportunities in the Netherlands

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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The Netherlands is a small, comparatively wealthy country with approximately sixteen million inhabitants. In 2003, the average household income was €28,000.¹ The relatively large economy of the Netherlands sustains a welfare state, resulting in few homeless, or otherwise destitute, citizens.² Due to the perceived absence of destitute people in the Netherlands, Dutch commercial law firms generally feel no particular responsibility to provide *pro bono* legal services. The Dutch Constitution provides for a right to access to justice and legal representation,³ and people with limited means seeking legal advice are believed to be well-represented by the system of government-subsidized legal services. Moreover, the Dutch legal aid system's registration requirements, low statutory fees, cumbersome reporting requirements, and the particular legal issues involved have motivated a number of attorneys to specialize in areas of law specifically affecting indigents.⁴ These same factors have also led commercial law firms to discourage associates from providing subsidized legal assistance. Consequently, the Dutch market for legal services is roughly divided between large commercial law firms and smaller law firms providing legal representation to people with limited means. In order to protect their respective profit margins, both large commercial law firms and smaller law firms assisting indigent clients are likely to resist efforts to establish a widespread *pro bono* culture in the Netherlands.

I. Legal Services and the Legal Profession in the Netherlands

Dutch civil procedure mandates that all cases with limited financial impact, all landlord-tenant disputes, and all employment-related disputes are within the exclusive subject matter jurisdiction of a one-judge tribunal ("*Kantonrechter*"), where representation by an attorney is not required. In addition, administrative appeals of adverse decisions in public benefits disputes do not require legal representation either. Consequently, persons with limited means are not required to retain counsel for the types of legal disputes they encounter most frequently. To serve their needs, a variety of nonprofit organizations subsidized by national and local governments are available to provide legal services. For instance, there is a national organization of "social advisers" ("*Sociaal Raadslieden*"), with approximately eighty offices across the Netherlands, that assists indigents in completing forms, writing letters, and bringing administrative appeals.⁵

The Dutch government also subsidizes legal assistance provided to indigents by attorneys in private practice.⁶ The subsidy itself consists of a statutory hourly fee that is paid by the government to the representing attorney. In order to discourage frivolous litigation, persons with

¹ See *Centraal Bureau voor de Statistiek* (The National Statistics Office), available at: <http://www.cbs.nl/en-GB/menu/themas/inkomen-bestedingen/publicaties/artikelen/archief/2005/2005-1774-wm.htm>.

² Largely unnoticed in official figures, however, is the number of illegal immigrants who live in poverty. Between April 2005 and April 2006, an estimated 75,000 to 115,000 illegal immigrants resided in the Netherlands. See *New Figures Concerning Illegal Immigrant Population*, Immigratie- en Naturalisatiedienst (Immigration and Naturalization Service), available at: http://www.ind.nl/en/inbedrijf/actueel/Nieuwe_cijfers_omvang_illegalenpopulatie.asp.

³ Articles 17 and 18.

⁴ See e.g., *De Vereniging voor Sociale Advocatuur Nederland*, available at: <http://www.vsanadvocaten.nl/>.

⁵ See *Sociaal Raadsliedenwerk*, available at: <http://www.sociaalraadslieden.nl>.

⁶ The Netherlands is a signatory of the European Convention on Human Rights. Article 6 of this Convention requires persons involved in civil or criminal disputes to have access to an impartial tribunal with general jurisdiction. See, e.g., *Albert and Le Compte v. Belgium*, 7299/75 Eur. Ct. H.R. (February 10, 1983) and *Schmutzer v. Austria*, 15523/89 Eur. Ct. H.R. (October 23, 1995). The right of access to an impartial tribunal includes the right to legal representation if such representation is required to pursue a claim or appeal. See *Gnahoré v. France*, 40031/98 Eur. Ct. H.R. (September 19, 2000).

limited means are also required to pay a limited, one-time fee to the attorney. The amount owed varies, depending on the amount of time spent on the case and the client's means.

A. Legal Aid

The Dutch Legal Aid Act (“*Wet op de Rechtsbijstand*”) provides that attorneys must be admitted to a specific panel of attorneys providing legal services to indigents before they are eligible to receive statutory representation fees from the government.⁷ In order to be admitted, any attorney in private practice must submit an application to the Legal Aid Board (“*Raad voor Rechtsbijstand*”). The Board consists of five regional offices and one central office. Legal advice, and, if necessary, help by a bar-registered lawyer are made available by two bodies: the so-called Legal Services Counters act as what is commonly known as the “front office” (primary help), whereas private lawyers and mediators provide legal aid in more complicated or time-consuming matters (secondary help). The legal aid system, therefore, is a mixed model, consisting of public first-line and private second-line help. In 2008, the Legal Services Counters provided legal assistance in 645,000 cases over the telephone, in person, and via e-mail and website inquiries.⁸

Attorneys admitted to provide legal services to indigents are required to submit specific applications for legal assistance to the Legal Aid Board before starting new representations.⁹ Applications must indicate the facts and circumstances of the case, the arguments that will be presented, and the client's legal interest in bringing the case.¹⁰ The Dutch Legal Aid Act provides that the Legal Aid Board is required to deny the application if: (a) it lacks any basis in law or fact; (b) the costs of the proceedings are excessive in comparison with the interest at issue; or (c) the case can reasonably be expected to be resolved by the client with or without the assistance of another person or organization not employing attorneys covered by this specific legal regime.¹¹

The statutory criteria for denying legal assistance is further explained in a January 11, 1994 administrative decree regarding criteria for subsidized legal assistance (“*Besluit Rechtsbijstand en Toevoegingscriteria*”).¹² Article 3 of this decree directs the Legal Aid Board to deny subsidized legal representation if it is “reasonable to assume that the client's claim or defense will be denied in light of recent case law.”¹³ In addition, article 4 of the decree directs the Council to deny subsidized legal representation if the monetary interest at stake is less than twenty percent of the client's monthly income or less than €180.¹⁴ Finally, article 8 of the decree requires the Council to deny subsidized legal assistance to immigrants seeking admission to the Netherlands, unless the immigrant seeks asylum, or is threatened with imminent incarceration.¹⁵

⁷ See *Wet op de Rechtsbijstand*, articles 14 and 13 (1) lit. a.

⁸ *Legal Aid in the Netherlands – a broad outline*, available at: http://www.rvr.org/binaries/about-rvr/default-opmaakvoorsel-brochure-legal-aid--rvr90265-_ve.pdf.

⁹ See *Wet op de Rechtsbijstand*, articles 24(2) and 28(1)(a).

¹⁰ *Id.* at Article 24(3) and (5).

¹¹ *Id.* at Article 12(2)(a), (b), and (g).

¹² See *Besluit Rechtsbijstand en Toevoegingscriteria*, available at: <http://www.rvr.org/>.

¹³ *Id.* at Article 3(e).

¹⁴ *Id.* at Article 4(2).

¹⁵ *Id.* at Article 8(1)(a).

II. *Pro Bono Opportunities in the Netherlands*

Like many other continental European jurisdictions, the Dutch regulatory regime does not generally allow attorneys to provide their services based on a contingency fee. It is believed that remuneration based on the outcome of a case will jeopardize the professional independence of attorneys and encourage frivolous litigation. However, the reluctance to allow attorneys to agree to outcome-dependent remuneration has not resulted in a prohibition on *pro bono* legal services, and attorneys in the Netherlands are free to provide legal services free of charge.¹⁶

Still, large commercial law firms in the Netherlands rarely provide legal services *pro bono*. An important factor discouraging commercial law firms from engaging in *pro bono* activities is the existence of alternative, government-subsidized legal services to persons with limited means. Despite this reluctance, however, it is evident that there is a demand for *pro bono* legal services in the Netherlands. Illegal immigrants seeking admission to the Netherlands, for example, are generally not entitled to subsidized legal assistance with regard to their immigration status. Moreover, although citizenship is not required for subsidized legal assistance in other types of disputes, a number of immigrants, as well as a number of Dutch people, are too poor to pay the required individual fee.

III. *Restrictions on Advertising*

Restrictive advertising regulations further discourage commercial law firms from providing *pro bono* services by limiting their ability to approach potential indigent clients.¹⁷ Aggressive advertising is not perceived as compatible with the nature of the attorney-client relationship, or the social status, or perceived societal role, of attorneys. The Dutch Bar Association (“*Nederlandse Orde van Advocaten*”) has therefore issued a publicity decree (“*Verordening op de Publiciteit*”), restricting both the content and the manner in which lawyers can advertise their services, with the stated aims of protecting the public and promoting a spirit of trust and cooperation among attorneys.¹⁸

The publicity decree indicates that attorneys are not allowed to approach possible clients, other than through the mail,¹⁹ to compare their services to those provided by other specifically identified attorneys,²⁰ to indicate success rates,²¹ or to advertise the nature of prior representations or particularities of clients without obtaining prior consent.²² In addition, attorneys have to be

¹⁶ See, e.g., *Nederlandse Orde van Advocaten, Verordening op de praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning)*, available at: <http://www.advocatenorde.nl/nova/novvade.nsf/c70ce544d407054ec12569f1004485c2/45470ba0b0965d39c1256e7e002b2fijdb?OpenDocument> (“*Overigens staat (en stond) het de advocaat te allen tijde vrij om met zijn cliënt overeen te komen om af te zien van enige financiële vergoeding, de zgn. no pay-afpraak, mits die afspraak maar niet gekoppeld is aan het in de zaak te behalen resultaat.*”).

¹⁷ A recent initiative of some large commercial firms aiming to bridge the gap with potential indigent clients involves externships with smaller law firms specializing in the representation of people with limited means.

¹⁸ See *Verordening op de Publiciteit, Introductie*, available at: <http://www.advocatenorde.nl/nova/novvade.nsf/0/8a3fc6a713200937c12565a60051089c?OpenDocument>.

¹⁹ *Id.* at Article 4.

²⁰ *Id.* at Article 3.

²¹ *Id.* at Article 6(1).

²² *Id.* at Article 6(2).

clear about the fees they charge, they cannot simply state a minimum representation fee, and they are not allowed to compare fees with other identified attorneys.²³

Unlike the general rules regulating attorney conduct (“*Gedragsregels*”), the Dutch Bar Association decree is binding, and attorneys are subject to sanctions for violating its provisions.²⁴ Although it limits competition among attorneys and hinders their ability to search for clients, the decree does seem to allow law firms to advertise *pro bono* efforts by distributing annual *pro bono* reports or brochures, depending on their content.²⁵

IV. Conclusion

Dutch law firms do not generally provide legal services *pro bono*, and many attorneys actually specialize in areas of law specifically affecting indigents because their fees are subsidized by the government.²⁶ Consequently, law firms in the Netherlands are not likely to embrace *pro bono*, even though there are populations, such as undocumented immigrants, who are in need of legal services but who do not have access to the free legal aid provided by the Dutch government.

²³ *Id.* at Article 8.

²⁴ See *Gedragsregels* 1992, Article 1.1.

²⁵ See, e.g., Stibbe, *Pro Bono*, <http://www.stibbe.nl/stibbe/view/About/template.do?UID=8ae45a010ab71d2ebf015328>.

²⁶ See, e.g., *De Vereniging voor Sociale Advocatuur Nederland*, available at: <http://www.vsanadvocaten.nl/>.