



Pro Bono Practices and Opportunities in the Netherlands¹

INTRODUCTION

The Dutch Constitution² (the “**Constitution**”) (and the European Convention on Human Rights)³ provide for a right to access to justice and legal representation. As a result, people with limited means seeking legal advice are generally well-represented by a comprehensive system of government-subsidized legal services. Accordingly, the nature of the available pro bono work in the Netherlands, performed primarily by large Dutch law firms, is less focused on indigents and more on interest groups and foundations serving broader social needs and advocating for human rights. These foundations are not entitled to receive government-subsidized legal aid, and therefore have a substantial need for pro bono legal services. This chapter describes the system of government-subsidized legal services in the Netherlands (which are provided by both non-profit organizations and attorneys in private practice), and the opportunities for, and barriers to, rendering pro bono legal services outside of this system.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

Chapter one of the Constitution enshrines the fundamental rights of all persons in the Netherlands, including equal treatment before the law, and prohibits discrimination on the grounds of religion, belief, political opinion, race, or sex. The Constitution was revised in 1983 to include a number of social rights, including a right to counsel in legal and administrative proceedings. Subsequent Acts of Parliament further outline rules regarding legal aid to indigent persons.

The Courts

Levels, Relevant Types, and Locations.

The judicial system of the Netherlands consists of 11 district courts (*rechtbanken*). Appeals in civil and criminal cases are heard by one of five Courts of Appeal (*gerechtshoven*). Appeals against administrative law judgments are sent to specialized tribunals — the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*), the Central Appeals Tribunal (*Centrale Raad van Beroep*), or the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*). In civil, criminal, and tax cases, appellate decisions can generally be contested by appealing in cassation (*cassatie*) to the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*). Citizens must generally be represented in court by counsel, except (i) in cases involving less than €25,000, (ii) in criminal cases, and (iii) in administrative cases, in which citizens have the right of self-representation.

Appointed vs. Elected Judges

All Dutch judges are appointed by Royal Decree and serve life terms. The Supreme Court consists of 35 judges appointed by Royal Decree, including a president, six vice-presidents, 24 justices (*raadsheren*), and four justices in exceptional service (*buitengewone dienst*). The Supreme Court is divided into four chambers: civil, criminal, tax, and ombuds.

¹ This chapter was drafted with the support of Michiel Coenraads at Stibbe Amsterdam.

² GRONDWET [CONSTITUTION] art. 18 (implemented in the WET OP DE RECHTSBIJSTAND [LEGAL AID ACT]); Eur. Convention for the Protection of Human Rights and Fundamental Freedoms (Nov. 1950, as later amended), E.T.S. 5, Art. 6.

³ The Netherlands is a signatory of the European Convention on Human Rights. Article 6 of this Convention requires persons to have access to an impartial tribunal as well as representation. See, e.g., *Albert & Le Compte v. Belgium*, 7299/75 Eur. Ct. H.R. (Feb. 10, 1983); *Schmautzer v. Austria*, 15523/89 Eur. Ct. H.R. (Oct. 23, 1995); *Gnahoré v. France*, 40031/98 Eur. Ct. H.R. (Sep. 19, 2000).



The Practice of Law

Education

Legal education in the Netherlands consists of a three-year Bachelor of Laws (LL.B.) degree, a one-year Master of Laws (LL.M.) degree, and optional further studies. Any student who completes a legal education is a *jurist* (lawyer). However, to become an *advocaat* (attorney admitted to the bar), Dutch law students must complete both a bachelor's program and a master's program with specific courses to receive *civiel effect*. This prerequisite allows the student to enroll in professional training to ultimately become either an *advocaat* or judge. The professional training (*Beroepsopleiding*) for an *advocaat* takes three years and consists of coursework and an apprenticeship under a supervising senior attorney (the patron).⁴ Pro bono work is not a requirement at any point in the legal education of an *advocaat*.

Licensure

After completing the professional training and apprenticeship, the lawyer becomes an *advocaat*. Every *advocaat* practising in the Netherlands is a member of the Dutch Bar Association (*Nederlandse Orde van Advocaten*). They are subject to the Dutch Act on Attorneys (*Advocatenwet*), and the administrative decrees and other rules, including the general rules regulating attorney conduct (*Gedragsregels*), issued by the Dutch Bar Association.⁵ Lawyers who do not comply with these rules are subject to disciplinary proceedings, and can ultimately be disbarred. A *jurist*, who does not practice in court but is allowed to give legal advice, is not a member of the Bar nor subject to codes of conduct or other requirements.

An in-house counsel (*bedrijfsjurist*) can be admitted to the bar and therefore be an *advocaat*, in which case all regular rules from the Dutch Bar Association (and some specific rules) apply. Only an in-house counsel that is an *advocaat* can represent his/her company in court.

Foreign attorneys from EU countries who are qualified in their home jurisdiction must first pass an aptitude test before they are allowed to practice law in the Netherlands.⁶

Demographics

As of January 1, 2015, there were approximately 17,315 members of the Dutch Bar. The lawyer-to-inhabitant ratio is relatively low with approximately one lawyer per 1,000 inhabitants. Over 50% of all law firms in the country consist of solo practitioners, totalling 2,724 firms; 88% of law firms in the Netherlands have fewer than six lawyers, and 98% have fewer than 21.⁷ In 2015, approximately 4,108 lawyers (or about 23% of lawyers) were working at the 50 largest law firms in the Netherlands.⁸

Legal Regulation of Lawyers

The Dutch Attorney Act, its implementing regulations, and the Dutch Bar Association provide rules on the practice of an *advocaat*. As discussed above, these regulations include rules on education and entry into the profession, as well as professional rules of conduct.

⁴ See Christian Kolb, International Bar Association, How to Qualify as a Lawyer in Netherlands, http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Netherlands.aspx (last visited on September 4, 2015).

⁵ All available at <https://www.advocatenorde.nl/advocaten/juridische-databank/wetenregelgeving> (last visited on September 4, 2015).

⁶ See Council Directive 89/48/EEC, Preamble (Dec. 21, 1988); ADVOCATENWET (ACT ON ATTORNEYS), art. 16a-k.

⁷ Dutch Bar Association, 2014 annual report, <https://www.advocatenorde.nl/11339/jaarverslag-2014> (last visited on September 4, 2015).

⁸ See <http://www.advocatie.nl/top50> (last visited on September 4, 2015).



LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

In Civil Proceedings

Dutch civil procedure rules mandate 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*), in which representation by an attorney is not required (and legal aid is not normally provided).⁹ In addition, legal representation is not required in administrative cases. Consequently, persons with limited means are not required to retain counsel for the types of legal disputes they encounter most frequently. However, representation is always allowed. Whether an attorney is required or not, litigants in civil cases can always avail themselves of state-subsidized legal aid if they meet certain criteria, primarily based on income. Any attorney who provides legal aid services for a subsidized fee is often called a *pro deo* attorney; by contrast, *pro bono* attorneys receive no compensation at all.

In Criminal Proceedings

The Legal Aid Law provides that legal aid is free, regardless of income, if the defendant is held in custody prior to the first hearing before a court. If a defendant is not in custody, they fall under the same Legal Aid Law rules as civil litigants and so, depending on the nature of the case and their income, may obtain *pro deo* counsel for free or at a lower rate. If they are acquitted, they are refunded any fees they paid.¹⁰

State-Subsidized Legal Aid

Eligibility Criteria

Indigency is the primary criterion for receiving legal aid subsidies.¹¹ The subsidy consists of a statutory hourly fee or a fixed fee per submission in the proceedings, paid by the government to the attorney. To discourage frivolous litigation, indigents 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 ability to pay.¹²

Attorneys admitted to provide legal services to indigents are required to submit a specific application for each client to the Legal Aid Board before taking on new engagements.¹³ 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.¹⁴ 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

⁹ A jurist (or any other person) is allowed to represent someone before the *Kantonrechter*, even though they cannot otherwise appear in court.

¹⁰ WET OP DE RECHTSBIJSTAND, art. 44(2).

¹¹ Persons with a relatively low income – €24,000 for single persons or €34,700 for non-single persons – may qualify for funded legal assistance. See <http://www.advocatenorde.nl/579/consumentengeen-geld-voor-een-advocaat.html> (last visited on September 4, 2015).

¹² See *Besluit eigen bijdrage rechtsbijstand*, available at <http://kenniswijzer.rvr.org/wet-en-regelgeving> (last visited on September 4, 2015).

¹³ See WET OP DE RECHTSBIJSTAND, arts. 24(2) & 28(1)(a).

¹⁴ *Id.* art. 24(3), (5).



client with or without the assistance of another person or organization not employing attorneys covered by this specific legal regime.¹⁵

Finally, the Legal Aid Board is required to deny subsidized legal assistance to an immigrant seeking admission to the Netherlands, unless the immigrant seeks asylum or is threatened with imminent incarceration.¹⁶

Assignments to Legal Aid Matters

Assignments to Matters: Ways of Receiving Aid

The Dutch Legal Aid Act requires attorneys to 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.¹⁷ In order to be admitted, an 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.

Under the supervision of the Legal Aid Board, two parties provide primary and secondary legal assistance to indigents: (1) Legal Services Counters (*Juridisch Loketten*), commonly known as the “front office,” serve as the primary point of contact for legal aid and, if necessary, will assist with referrals to a lawyer or mediator; and (2) private lawyers and mediators, registered with the Legal Aid Board, provide secondary legal aid in more complicated or time-consuming matters.

In addition to attorneys in private practice, a variety of nonprofit organizations subsidized by national and local governments are available to provide legal services to indigents. For instance, there is a national organization of “social advisers” (*Sociaal Raadslieden*), subsidized primarily by municipalities, with approximately 80 offices across the Netherlands, that assists indigents in completing forms, writing letters and bringing administrative appeals.¹⁸

The legal aid system, therefore, is a mixed model, consisting of public first-line and private second-line help. In 2014, Legal Services Counters provided easily accessible, free legal services to over 300,000 clients.¹⁹

Unmet Needs and Access Analysis

Legal aid is only available to individuals. As a result, non-profit organizations and foundations with limited funding have turned to large law firms for pro bono legal assistance.

Alternative Dispute Resolution

Mediation

Administrative regulations issued under the Dutch Legal Aid Act govern the provision of legal aid during mediation. All regulations governing legal aid extend to mediation, including the limitations on indigence.²⁰

¹⁵ Id. art. 12(2)(a), (b), and (g). The statutory criteria for denying legal assistance is further explained in a January 11, 1994 administrative regulation regarding criteria for subsidized legal assistance (Besluit Rechtsbijstand en Toevoegingscriteria), available at <http://kenniswijzer.rvr.org/wet-en-regelgeving> (last visited on September 4, 2015). For instance, if recent legal developments indicate a claim is very likely to fail, or if the monetary interest is less than €250, legal aid is generally denied.

¹⁶ Regulation on Criteria for Subsidized Legal Assistance, art. 8(1)(a).

¹⁷ See WET OP DE RECHTSBIJSTAND, arts. 14 and 13(1) lit. a.

¹⁸ See SOCIAAL RAADSLIEDENWERK, available at <http://www.sociaalraadslieden.nl> (last visited on September 4, 2015).

¹⁹ Legal Aid in the Netherlands, available at <http://www.rvr.org/english> (last visited on September 4, 2015).

²⁰ See Besluit Toevoeging Mediation arts. 2 and 3, available at <http://kenniswijzer.rvr.org/wet-en-regelgeving/besluit-toevoeging-mediation/besluit-toevoeging-mediation.html> (last visited on September 4, 2015).



Ombudsman

In the Netherlands, the National Ombudsman is an independent agency charged with investigating complaints from citizens about improper behavior by other government agencies and the police. However, it cannot issue any legally binding resolutions and must rely on Parliament to apply political pressure to implement its findings.²¹

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

Given the government provision of extensive legal aid, attorneys have no legal duty to provide pro bono assistance. Working with the subsidized legal aid program (*pro deo*) or providing services for free (pro bono) is a decision left entirely to the individual attorney.

Law Firm Pro Bono Programs

Only a few large, commercial law firms in the Netherlands provide pro bono legal services. As previously discussed, the nature of the pro bono work in the Netherlands is less focused on indigents and more on interest groups and foundations serving public or social needs and human rights. These foundations are not entitled to receive government-subsidized legal aid and therefore have a substantial need for pro bono legal services. Large law firms that provide pro bono legal services to such organizations often require that the case holds demonstrable social significance or sets a legal precedent.

Non-Governmental Organizations (NGOs) & University Clinics

There are many non-profit organizations in the Netherlands that provide legal advice at no cost. Those foundations are commonly known as *Rechtswinkels* (Law Stores). Staff usually consists of law students and other volunteers, and they can exist as separate foundations or be part of a university.²² Generally, these organizations perform a function similar to the Legal Services Counters. Because most Law Stores receive almost no subsidies, there has been some controversy over Law Stores disappearing in recent years.

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

Legal aid in the Netherlands has a long history, and as a consequence true pro bono work has been very limited. Some form of legal aid has been provided for indigents since the 15th and 16th centuries. Government-sponsored legal aid expanded throughout the 20th century. In the 1960s and 1970s, social movements focused on access to justice, and the first Law Stores were founded by law students. In 1983, a constitutional right to legal aid for individuals was enshrined.²³

Current State of Pro Bono including Barriers and Other Considerations

Recently, globalization and the rise of large international law firms have spurred further development of pro bono activities in the Netherlands. Influenced by the Anglo-American model, Dutch firms (or Dutch offices of large multinational firms) are increasingly looking abroad for impactful pro bono work. For

²¹ Nationale Ombudsman, Parlement & Politiek, Leiden University, http://www.parlement.com/id/vh8lnhrpmtxvr/nationale_ombudsman (last visited on September 4, 2015).

²² See, e.g., De Leidsche Rechtswinkel, <http://www.leidserechtswinkel.nl/> (last visited on September 4, 2015) (part of Leiden University).

²³ Raad voor Rechtsbijstand, Informatie over de Raad: Geschiedenis, <http://www.rvr.org/Informatie-over-de-raad/organisatie/taken-van-de-raad/geschiedenis.html> (last visited on September 4, 2015).



instance, large law firms have worked in developing countries in democracy-building efforts, have helped track the Charles Taylor process in Sierra Leone, and have aided organizations opposing the death penalty in the U.S. and elsewhere.²⁴

Laws and Regulations Impacting Pro Bono

Rules on Fees

Like many other continental European jurisdictions, the Dutch regulatory regime does not generally allow attorneys to provide their services based on a contingency fee.²⁵ However, attorneys in the Netherlands are permitted to provide legal services completely free of charge (i.e., pro bono legal services).²⁶ Lawyers are not required to charge VAT on their services and there are no anti-competition regulations that require lawyers to charge minimum tariffs.

The Netherlands has a mitigated “loser pays” law in civil litigation. The winner can recover his or her legal fees based on a statutory fee system that caps compensation based on the amount of work performed.²⁷ Generally, this statutory compensation does not reflect the costs actually incurred.

Rules Directly Governing Pro Bono Practice

The primary barriers to pro bono work are regulations on lawyer publicity. The Dutch Bar has restrictive advertising regulations that may discourage commercial law firms from providing pro bono services by limiting law firms’ ability to approach potential clients. The Dutch Bar Association has 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.²⁸ Although it limits competition among attorneys and hinders their ability to search for clients, the decree does allow law firms to advertise pro bono efforts by distributing annual pro bono reports or brochures, but regulates their content.²⁹

Practice Restrictions on Foreign-Qualified Lawyers

The rules on foreign lawyers practicing in the Netherlands are fairly complex, and differ for EU and non-EU citizens. In practice, there are no reports of foreign lawyers practicing pro bono in the Netherlands. While pro bono projects may be multi-jurisdictional, Dutch attorneys normally act as local counsel and deal with the Dutch elements of a project.

Concerns About Pro Bono Eroding Public Legal Aid Funding

In the Netherlands, pro bono work complements *pro deo* work performed in the context of legal aid; pro bono clients are usually organizations, and *pro deo* clients are individuals. Plus, pro bono work is

²⁴ Advocatie, Pro Bono-Activiteiten van Nauta, de Brauw, en CC (Aug. 22, 2007), <http://www.advocatie.nl/pro-bono-activiteiten-van-nauta-de-brauw-en-cc> (last visited on September 4, 2015).

²⁵ See Verordening op de Praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning), available at <http://maxius.nl/verordening-op-de-praktijkuitoefening-onderdeel-resultaatgerelateerde-beloning> (last visited on September 4, 2015).

²⁶ See, e.g., Nederlandse Orde van Advocaten, Verordening op de Praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning), available at <http://snipurl.com/2a76itu> (last visited on September 4, 2015).

²⁷ For the regulations on the point system and fees, see Tariffs for Trial Courts and Courts of Appeals (Liquidatietarief Rechtbanken en Gerechtshoven), <https://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-civiel-recht/Pages/Liquidatietarief-rechtbanken-en-gerechtshoven.aspx> (last visited on September 4, 2015).

²⁸ See Verordening op de Publiciteit, available at <http://maxius.nl/verordening-op-de-publiciteit> (last visited on September 4, 2015).

²⁹ See, e.g., STIBBE, Pro Bono, <http://www.stibbe.nl/stibbe/view/About/template.do?UID=8ae45a010ab71d2ebf015328>, and Nauta Dutilh, CSR, <http://www.nautadutilh.com/en/home/our-firm/corporate-social-responsibility/> (last visited on September 4, 2015).

generally only performed by large law firms. As a result, there are no real erosion concerns. While legal aid funding is currently the subject of public controversy, that is not because of pro bono work.³⁰

Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys

Generally, professional insurance covers liability arising out of pro bono work. However, there are no reports of any claim against a firm in relation to pro bono work. In addition, Dutch law firms ordinarily limit liability in their engagement letters or terms and conditions to the amount of fees paid (which is zero for pro bono engagements).³¹

Availability of Legal Insurance for Clients

Legal insurance is commonly and cheaply available from a variety of large and small insurance carriers in the Netherlands for people of moderate means (who would not otherwise qualify for subsidized legal aid). A recent European decision has provided that insurance companies cannot restrict an insured's choice in attorney, protecting the interests of the insured.³² As a result, individuals rarely if ever need pro bono assistance.

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Given the structure of legal aid in the Netherlands, there are very few barriers to participation in the formal legal system for individuals. Public trust in the legal system is fairly high compared to other countries,³³ and pro bono work complements existing structures rather than serves as an alternative.

Pro Bono Resources

- Stibbe, Pro Bono Committee
Address: Stibbetoren, Strawinskyiaan 2001, 1077 ZZ Amsterdam, Netherlands
Phone: +31.20.546.06.06
Website: <http://www.stibbe.com>
Email: probono@stibbe.com (last visited on September 4, 2015)
- The *Raad voor Rechtsbijstand* (Legal Aid Board) provides information on access to government-sponsored legal aid. See *Legal Aid in the Netherlands*, available at http://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/brochure-legalaid_juni2013_webversie.pdf (last visited on September 4, 2015)

CONCLUSION

In the Netherlands, people with limited means seeking legal advice are well-represented by the system of government-subsidized legal services. A variety of government and non-profit organizations are available to provide legal services and the Dutch government subsidizes legal assistance provided to indigents by attorneys in private practice.

Because of the comprehensive regime of government-subsidized legal services for indigents, pro bono legal services – engaged in primarily by large law firms – are more focused on interest groups and foundations serving social needs and human rights, which are not entitled to receive legal aid. Presently only a few large commercial law firms provide pro bono services. Lawyers in such firms looking to engage in pro bono work may consider seeking opportunities for pro bono representation of organizations in legal matters that hold demonstrable social significance or have the potential to set new legal precedent.

³⁰ See, e.g., Eerste Kamer Trekt Streep door Bezuiniging op Rechtsbijstand [Senate Rejects Legal Aid Budget Cuts], NRC (Jan. 20, 2015), <http://www.nrc.nl/nieuws/2015/01/20/eerste-kamer-trekt-streep-door-bezuiniging-op-rechtsbijstand/> (last visited on September 4, 2015).

³¹ It is unclear whether this limitation on liability is permitted; it has never been tested in court.

³² Case C-442/12, Sneller v. DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV (2013).

³³ See Bert Niemeijer & Peter van Wijck, Verschillen Tussen Burgers in Vertrouwen in de Rechtspraak, 34 *Recht der Werkelijkheid* (Dec. 2013), available at <https://media.leidenuniv.nl/legacy/pvw-2013-02.pdf> (last visited on September 4, 2015).



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