

Raad voor Rechtsbijstand

Special legal aid arrangements after extensive government failure

Dutch Legal Aid Board

Lianne Otten, Edwin Borghs, Maarten Nieuwenburg and Wilco van den Dool

May 2025

Table of Contents

Abstract	2
1 Introduction	2
2 Context of special legal aid arrangements	2
2.1 In short: the legal aid system in the Netherlands	2
2.2 Development of special legal aid arrangements	3
2.3 Special legal aid arrangements currently in force.....	3
2.4 Childcare benefits scandal	5
2.5 Damage due to mining-activities (Groningen)	6
3 Establishment and implementation of special legal aid arrangements	7
3.1 Establishment of the arrangements	7
3.2 Content of the arrangements	8
3.3 Implementation of the arrangements.....	9
4 Benefits and challenges of special legal arrangements	10
4.1 Benefits and challenges.....	10
4.2 Alternatives?	11
4.3 In conclusion	12

Abstract

The past few years the Dutch government has adopted several special legal aid arrangements aimed for specific groups of people. These arrangements are created either to provide legal aid for people who were affected by government behaviour that created damages at large scale or to fill in gaps in policy that were identified. Examples of the first mentioned category are arrangements for parents that are victims of the Dutch childcare benefits scandal (2021) and owners of houses in Groningen that are damaged due to mining-activities (2023). In contrast to regular subsidised legal aid, this legal aid is fully free of charge for citizens (i.e. no own contribution is asked) and is meant for everyone in this specific group (i.e. no means test takes place). Whereas these flexible arrangements that are taken swiftly, evidently benefit people that are abandoned by the government and can help to regain trust, this approach also has challenges.

Political pressure regularly creates a high urgency for arrangements like these. The Ministry concerned with this problem mostly already has established procedures for compensation of harm and ideas on how legal aid should be organised. Result may be that it has wishes that do not fit into the ordinary legal aid system. The implementation and execution also pose challenges. Since these arrangements are different from regular legal aid, they require different procedures from employees of the Dutch Legal Aid Board. This paper describes the content and context of special legal aid arrangements, the process of how these arrangements are established and the challenges that come with them.

1 Introduction

Access to justice for people in a vulnerable situation is of key importance. The Dutch Legal Aid Board (LAB) provides legal aid to people of limited means and thereby realises the constitutional right to legal aid.¹ The past few years, the Dutch government established several legal aid arrangements targeting specific groups of people, for example for people who fell victim of extensive government failure. Special regulations came into place, aimed at providing legal aid for these groups. Legal aid through these arrangements differs from, and therefore functions outside, the regular system of legal aid in the Netherlands. This paper starts with an explanation of context and content of the arrangements that the LAB has implemented (in section two). Section three explores the recurring themes in the establishment and implementation of the arrangements. Section four, lastly, draws several preliminary conclusions about the benefits and challenges of special legal aid arrangements.

2 Context of special legal aid arrangements

This section starts with a short description of legal aid in the Netherlands. It then explains the development of special legal aid arrangements. Lastly, it highlights two current arrangements aimed at compensating people who were harmed by extensive government failure.

2.1 In short: the legal aid system in the Netherlands

The Dutch Legal Aid system provides legal aid to people of limited means. The main goals of the Legal Aid Act are to facilitate access to justice and also to keep the system affordable. The Ministry of Justice and Security is responsible for this system.

Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act. Legal Services Counters (LSC) are the 'front office', providing legal information and advice (primary help). Private lawyers and mediators provide legal aid in more complicated or time-consuming matters (secondary help) in the form of certificates. In order to provide legal aid, these lawyers

¹ Article 18 Constitution of the Kingdom of the Netherlands.

and mediators have to be registered at the LAB. For most legal domains, additional specialisation requirements are in place.

A lawyer or mediator submits an application to the LAB on behalf of his client. The LAB performs a means test, as it assesses the client's income and assets. Additionally, it assesses whether (among other things) the legal problem in question is of enough significance and whether the client cannot tackle this problem by him- or herself or with other support. The LAB also assesses if the application regards a new problem or if it is in reach of the same problem. In the latter case generally no new certificate is issued. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case as a subsidised case. The client has to pay an income-related contribution for the legal aid. In 2024 398.090 certificates were issued.² Generally, lawyers are paid a fixed fee. Each type of case is ascribed a fixed amount of points. A point should correspond with approximately one hour of work.³ The amount of points is an (evidence-based) estimation of the hours of time the case generally and on average would cost. Exceptions can be made for more time consuming cases.⁴

The Legal Aid Act provides the LAB the competence to subsidise legal aid for special purposes and projects.⁵ According to the Act this legal aid for special purposes or projects should be laid down in regulation. This provision is used for the special legal aid arrangements that are now in place.

2.2 Development of special legal aid arrangements

Even though the establishment of special legal aid arrangements *in published regulation* is a relatively new development (since 2021), in the past other arrangements were in place. One example is the arrangement for next of kin of the 196 Dutch victims of the shooting down of the MH17 plain above Ukraine in 2014. Other examples are an arrangement for victims living in the area that was ruined due to the explosion of a fireworks warehouse in Enschede in 2000, and an arrangement after a bar in Volendam burned down during the New Years' eve of 2001.

In general, these arrangements were established after a large-scale incident that affected many people. The consequences of the incident were severe, complex and multi-levelled and resulted in several legal issues, such as the actual cause of the disaster, the liability, and the (reassurance of) damage. Because the victims or their next of kin were confronted with this complex of legal problems, it was seen unfair by the government to let them pay the legal costs themselves. Legal aid was therefore offered. That means that each person in the specific group of victims was entitled to legal aid free of charge, regardless of income and assets. Victims could choose a lawyer from a group of specialised lawyers who registered for the legal aid arrangement.

Since 2021, the LAB has established several new legal aid arrangements. These arrangements are now laid down in published regulation, which makes them more transparent.

2.3 Special legal aid arrangements currently in force

This section provides an overview of the special legal aid arrangements currently in place. There are different reasons for establishing the arrangements. Sometimes a gap in the legal aid system is found. Since it takes several years to fill this gap in law (by changing the Legal Aid Act), the arrangement fills this gap in the meantime. In

² Raad voor Rechtsbijstand (2024), *Jaarverslag 2024: Recht Vinden*. <https://jaarverslag.raadvoorrechtsbijstand.org/>

³ For each point, lawyers receive €137,47 (in 2025).

⁴ Raad voor Rechtsbijstand, *About the Dutch Legal Aid Board*. <https://www.rechtsbijstand.nl/over-ons/about-the-dutch-legal-aid-board/>

⁵ Articles 37b and 37c Dutch Legal Aid Act.

other cases, a legal aid arrangement provides legal aid for citizens after mass harm, like the examples mentioned above.

What the arrangements have in common, is a wish to (relatively) rapidly provide legal aid for situations or citizens that are normally excluded and/or under conditions that differ from regular subsidised legal aid. This wish commonly results from (political) urgency that follows after an injustice was identified. The overview starts with arrangements that fill gaps in the legal aid system and then continues with arrangements for specific groups of people, highlighting two examples that were established after extensive government failure.

Regeling adviestoevoeging Zelfredzaamheid (Ratz)

After the revelation of a large-scale childcare benefits scandal (see below), the assumption of self-efficacy in the public legal aid domain is under further scrutinization. The LAB, LSC and the Dutch Bar association initiated a special, temporary arrangement called the Ratz (Regeling Adviestoevoeging Zelfredzaamheid; Arrangement for Advice Certificate Self-efficacy). Under this arrangement, citizens receive legal advice, whereas under the Legal Aid Act they would not have been granted legal aid because they are assumed to be able to take action themselves, or with other kinds of support.

If their case meets specific criteria, citizens can get a referral to a lawyer from LSC. Their income and assets are assessed, i.e. the citizens need to have limited means. The lawyer then applies for a special (Ratz) certificate. A diagnostic form filled out by LSC and an application form filled out by the lawyer are sent to the LAB. If the LAB approves the application on the basis of the information in these documents, the lawyer can provide up to three hours of legal aid. The citizen does *not* have to pay a contribution for the legal aid. Approximately 5.300 certificates per year are issued since the start of the arrangement. The former Minister of Justice and Security has announced that the arrangement will be in place until the Dutch Legal Aid Act has been amended.

Tijdelijke subsidieregeling rechtsbijstand gezagsbeëindiging en eerste (spoed)uithuisplaatsing

As of 2023, a) parents who are faced with a procedure in which the government wants to terminate parental authority over their child(ren), and b) parents with parental authority who are faced with a procedure in which the government wants to remove their child(ren) from home, can receive free legal aid from a specialised lawyer via the "Tijdelijke subsidieregeling rechtsbijstand gezagsbeëindiging en eerste (spoed)uithuisplaatsing". This arrangement allows parents to be represented by a subsidised lawyer in the legal proceedings. No assessment of income or assets takes place and no contribution for the legal aid is required.

Tijdelijke subsidieregeling rechtsbijstand bij beslag op inkomen of vermogen

Since 2024, in certain cases, the LAB may take into account a seizure of income or assets on the basis of the "Subsidieregeling rechtsbijstand bij beslag op inkomen of vermogen". This temporary arrangement was initiated by the LAB and designed for legal aid applicants who otherwise would be a) rejected on the basis of the means test or b) would have to pay a high income-related contribution, but cannot use their income or assets due to a seizure. The arrangement provides the LAB the opportunity to take this seizure into account and issue a certificate for these applicants, and at the same time monitor the incidence of these situations.

Legal aid arrangement for whistleblowers

The Dutch Whistleblower Protection Act came into force in 2023. The act requires organisations with more than fifty employees to put an internal reporting procedure in

place.⁶ A subsidy scheme was drafted to organise legal aid in the cases where the Dutch Whistleblowers Authority considers this necessary. The LAB is working with the Ministry of Justice and Security but also with the Ministry of Home Affairs (the responsible Ministry), and with the Dutch Whistleblowers Authority.

The advisory department of the Whistleblowers Authority assesses whether there is a reasonable suspicion of wrongdoing. If this is the case, the whistleblower receives a service letter, allowing him/her to use the services of the Whistleblowers Authority. If the advisory department then concludes that legal assistance and/or mediation is necessary, it issues a referral letter for the LAB. In addition to the whistleblower, the following individuals may be eligible for this subsidy scheme:

- Individuals who intend to report a suspicion of wrongdoing;
- Involved third parties (such as a colleague or family member who may experience detriment in a work-related context);
- Individuals assisting the whistleblower (such as a confidant or union representative).

Although it often concerns a labour law dispute, other areas of law may be involved as well. For example, criminal law (leaking company secrets) or social security law (a dismissal case). The LAB, if possible, matches lawyers and/or mediators who specialise in the area(s) of law. If necessary, a second lawyer and/or mediator with the relevant specialization will be added.⁷ The subsidy scheme commenced in February 2024 for a period of four years. An evaluation will determine what happens after that period. The beginning of 2025, the LAB issued 19 certificates. 70 lawyers and 61 mediators are registered at the LAB for the arrangement.

The next two sections will elaborate on two special legal aid arrangements after government failure.

2.4 Childcare benefits scandal

How it started

In 2019, it was revealed that the Dutch tax authorities had used a self-learning algorithm to create risk profiles in an effort to spot child care benefits fraud. This system — which was launched in 2013 — was intended to weed out fraud with benefits at an early stage. Having dual nationality was marked as a risk indicator in the algorithm, as was a low income. Authorities penalised families over a suspicion of fraud, based on the system's risk indicators. Being falsely identified as fraudsters resulted in parents being stripped of their benefits and ordered to repay benefits in full. When parents protested these false fraud allegations, it was difficult to obtain subsidised legal aid because they were assumed to be able to take action themselves, or with other kinds of support. The scandal plunged low-income families into crisis, resulting in loss of personal possessions, jobs and marriages. A parliamentary report into the child care benefits scandal (titled: Unprecedented Injustice) identified several grave shortcomings, including institutional biases and authorities hiding information or misleading the parliament about the facts.⁸

Compensation

The Dutch government has admitted the faults that were made and committed itself to generously compensate damages to the individuals affected. In 2022, the government decided to pay all victims 30.000 euros. If actual damages exceeded this

⁶ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Text Dutch Whistleblower Protection Act*. <https://www.wetbeschermingklokkenluiders.nl/english>.

⁷ Raad voor Rechtsbijstand, *Subsidieregeling Klokkenluiders*. <https://www.rvr.org/advocaten/ingeschreven/subsidieregeling-klokkenluiders//>

⁸ <https://www.theguardian.com/world/2021/jan/14/dutch-government-faces-collapse-over-child-benefits-scandal>, <https://www.politico.eu/article/dutch-scandal-serves-as-a-warning-for-europe-over-risks-of-using-algorithms/>.

amount, people can request extra compensation. Also, children, ex-partners, and next of kin of victims that have died can receive compensation. Early 2025, over 68.000 parents have registered as victims with damages. 41.000 people are recognised as a victim and received at least €30.000 euro. Also over 110.000 children and 4.200 ex-partners received compensation. The compensation for additional damage initially took place through an administrative procedure set up by the government. In the meantime, also an alternative route is in place, organised by a foundation that operates independently from the government.

Legal aid

As of 2021, people who are officially acknowledged as affected by the childcare benefits scandal are eligible for fully subsidised legal aid by lawyers that have registered for the arrangement. As of end 2023, ex-partners and children are also eligible.⁹ The LAB works with the Ministry of Justice and Security as well as with the Ministry of Finance. The latter is the responsible Ministry for the compensation process. The LAB is also in close consultation with representatives of lawyers. The process of restoration and compensation costs more time and resources than initially expected. In 2024, a total of 9 billion euros was spent in this process. The demand for legal aid lawyers was higher than anticipated. By the end of 2024, more than 16.000 victims were matched with a lawyer. More than 250 lawyers provide legal aid on basis of this special arrangement.

2.5 Damage due to mining-activities (Groningen)

How it started

In 1948, natural gas was discovered in The Netherlands for the first time. In 1959, the NAM (Nederlandse Aardolie Maatschappij) started extracting gas from the Groningen field near Slochteren. This field is one of the largest gas fields in the world and greatly contributed to the welfare in The Netherlands. Since 1986, there have been earthquakes in Groningen caused by this natural gas extraction. The extraction has weakened the geological structure, leading to frequent earthquakes. Consequently, properties in the area were significantly damaged. Unsurprisingly, serious concerns about safety and environmental impact exist. Although they have stopped the tapping of gas since last year, the earthquakes will probably continue in the decades to come.

Although signals were already present in the 1960s that gas extraction posed risks for earthquakes and that actual earthquakes occurred in the 1980s, both NAM and the government stated until the early 1990s that this was not a result of gas extraction.

Compensation

Even after the initial acknowledgment that gas extraction was the cause of the earthquakes, it took until 2018 for the Dutch government to recognize that the earthquakes were a consequence of gas extraction and that those affected had the right to be compensated. In the following years it became clear that many affected individuals faced difficulties in obtaining compensation or repairs for the damage caused, as well as navigating the complex legal processes involved. This is not only because of the complex subject matter, but also because of the difficult procedures of the NCG (National Coordinator Groningen) and IMG (Instituut Mijnbouwschade Groningen). Compensation for damages lies with IMG, while NCG is responsible for assessing, designing, and implementing structural reinforcements to ensure the safety of residents. The reinforcements of buildings is expected to be completed in 2034.

In addition to reinforcement, damage is also repaired and compensated. This is handled by IMG (Mining Institute Groningen). There are roughly three options:

- A fixed compensation of € 10.000;

⁹ Staatscourant 2023, 29583, <https://zoek.officielebekendmakingen.nl/stcrt-2023-29583.html>.

- Repair up to € 60.000 based on damage assessment without investigation into the cause;
- Repair or compensation based on damage assessment and investigation into the cause.

Legal aid

In July 2023 the Dutch government established a special legal aid arrangement to support victims in to receive compensation of harm.¹⁰ The legal aid covers the costs of legal representation for those who qualify. No means test takes place. It is also possible to engage experts through the LAB without incurring any costs. At the end of 2024 700 citizens have used this arrangement. The process for accessing legal aid through the LAB is designed to be straightforward. Citizens must apply for legal aid and they have three options to choose from:

- The LAB presents a selection of three possible lawyers that are qualified. Citizens can choose one lawyer;
- Citizens can choose a preferred lawyer that is registered with the Board for these cases or is suitable for registration.
- Citizens can choose a mediator.

The lawyer or mediator must hand over a decision from one of the government bodies who are involved to the LAB. Once approved by the LAB, victims are assigned to a lawyer who will assist them throughout the legal process, which often involves complex negotiations and litigation with large corporations and governmental bodies.

The LAB is working with the Ministry of Justice and Security and also with the Ministry of Home Affairs, responsible for repairing the situation in Groningen. Also the LAB is in close consultation with representatives of lawyers.

The LAB's role is vital in ensuring that individuals are not excluded from legal recourses due to financial limitations. By offering free legal aid, the LAB empowers citizens to seek justice and compensation for the damage caused by the gas extraction industry. As of February 2025 45 lawyers and 40 mediators participate in the arrangement. 677 certificates were issued to 487 citizens, of which 66% concerns compensation of harm and 34% regards strengthening of houses.

3 Establishment and implementation of special legal aid arrangements

Several similarities can be discovered when looking at the establishment and implementation of the arrangements mentioned above. This section will describe these similarities in order to draw some preliminary conclusions in section 5. The focus will be specific on the arrangements regarding the mining damage and the childcare benefits scandal; arrangements that were established after extensive government failure.

3.1 Establishment of the arrangements

The establishment of legal aid arrangements was a relatively new process for the LAB; several lessons can be learned.

Legal aid responds to already set procedures

The debate after the extensive government failure initially focusses on the actual problems of the victims. Victims of the childcare benefits scandal face massive debts and in Groningen people need safe residence after houses were declared uninhabitable or unstable. These problems and all other immaterial problems that people face need to be restored or compensated. The need to organise legal aid mostly arises later in this process. The 'route' to receive compensation then has mostly already been set. In both the childcare benefits scandal and the mining damage in Groningen these 'routes' are via administrative law-procedures. The ministry that is concerned with the problems (i.e. not

¹⁰ Staatscourant 2023, nr. 22116, <https://zoek.officielebekendmakingen.nl/stcrt-2023-22116.pdf>.

the Ministry of Justice and Security) often already has an idea on how legal aid should be arranged when it is contacting the Ministry of Justice and Security. The LAB consequently is 'drawn into' these problems and 'routes'.

The expected need for legal aid

For the recovery of harm after the childcare benefits scandal on the outset a generous and smooth process for victims was planned, with a limited role for legal aid. With the establishment of procedures and bodies for this process, the government wanted to restore the damage itself. Initially the role of lawyers was seen as an extra security measure. By facilitating free legal aid for the established administrative law procedures, this route was made more attractive. However, the process, as mentioned above, turned out to be less smooth; a 'juridification' took place and the role of lawyers gradually expanded. This was not (completely) foreseen.

In the restoration of mining damage it was already clear from the beginning that legal procedures would take place. During the negotiations about legal aid the LAB could take this into account. The previous experience with the childcare benefits arrangement also contributed in giving a better estimation of the amount of legal procedures in the arrangement.

Unify generous legal aid with the legal aid system

Resources for legal aid in special legal aid arrangements derive from another budget, namely the budget of the Ministry that is concerned with restoring the damage. The ideas on the generosity of the legal aid to be provided can therefore differ from the ordinary legal aid system. The challenge is to try to let these ideas correspond with this system as much as possible. This process consists of discussions between the ministries and (later on) the LAB about the scope of the arrangement. The following items are discussed:

- for whom is the legal aid intended,
- which legal problems and which procedures does it cover,
- the extent to which the legal aid is free of charge, and
- the need for specialised lawyers and their fees.

The LAB assesses whether the plans are executable and whether the efforts and costs that come with it are manageable.

Ever changing dynamics

The compensation efforts of the government are under serious scrutiny, the political pressure is high and there is an urgent need to find a quick solution. This entails that the ideas of the compensation itself and the legal aid that accompanies it may vary throughout the process of establishing the arrangement.

3.2 Content of the arrangements

Special legal aid arrangements show several distinctions to ordinary legal aid. These distinctions will be described here from the perspective of the citizens, the lawyer and the LAB.

The special arrangements require no contribution of *citizens*. Legal aid is thus intended for everybody in the specific group (also when they have a legal aid insurance). This distinction with the regular legal aid system is particularly notable in the arrangement on mining damage. This arrangement is aimed at people that own a house and therefore those who receive legal aid are not always of limited means. Citizens only receive legal aid free of charge when they are represented by lawyers that participate in the arrangement via the LAB.

For *lawyers* a distinction with the legal aid system is the prerequisite to register for the arrangement at the LAB. Specialisation in the field of law is required. For example, for the special arrangement for the mining damage commercial lawyers may also participate when they are specialised in administrative law. Joining the

arrangement will be accompanied by several obligations. Lawyers declare to be willing to participate in evaluation and research and to participate in peer review.

Other distinctions concern the fees for lawyers. As there is no previous experience, an estimation of the time required is made, resulting in a fixed fee. The challenge is to make a realistic and appropriate estimation and to consequently monitor this. The fee per hour is the same as in the legal aid system. Partly because of the expected complicated nature of the cases, the fixed fee in the mining damage arrangement is high (the highest for a certificate the LAB issues). In the childcare benefits arrangement potentially more certificates can be issued, since no assessment takes place whether the application for legal aid regards a new problem or if it is in reach of the same problem.

In the mining damage arrangement there was uncertainty beforehand whether enough lawyers would register. In many cases like these the lawyers would work for a (higher) commercial fee and it was unsure whether they would be inclined to work on the basis of the fee of the legal aid system. The mining damage arrangement also provides the opportunity for lawyers to get a fee for hiring a financial and construction adviser; a possibility the legal aid system does not ordinarily provide in.

For the *LAB* the arrangements provide possibilities to take extra steps for citizens dealing with severe problems. Activities the *LAB* wishes to practice regularly in the near future can already be performed in the arrangements. These activities aim to provide better access to justice:

- The *LAB* matches a client with a lawyer; this aims to give citizens more control over the choice of the service they prefer.
- Lawyers are obliged to participate in peer review which is aimed to assure quality.
- Also a specific way of hour registration takes place in order to see if the fixed fees in the arrangements are adequate.
- To learn and improve services the Knowledge Centre of the *LAB* facilitates a feedback loop by regularly conducting surveys amongst citizens and lawyers. Lawyers are obliged to participate.

The arrangements are temporarily. The arrangement for victims of the childcare benefits scandal arrangement will end in 2027 (although this can be prolonged). For the arrangement regarding mining damage no end date is set.

3.3 Implementation of the arrangements

On a strategic, tactical and operational level the execution of legal aid arrangements have similarities.

On the *strategic* level the *LAB* cooperates with ministries other than the Ministry of Justice and Security and partners such as the Dutch Bar association. The monitoring of the arrangements and requests for adjustments in the arrangements are discussed in meetings with those partners. Regarding the arrangement for childcare benefits the *LAB* and Dutch Bar are in direct contact with the Ministry of Finance and at times inform the State Secretary who is responsible to signal potential bottlenecks in the compensation process. The Ministry of Justice and Security remains responsible for the *LAB* and the budget it receives for executing the arrangements.

On a *tactical* level the *LAB* facilitates consultation groups of lawyers. Because the legal issues are new and complex there is a need for consultation amongst lawyers on a more regular basis. The goal of these consultation groups is to monitor if the citizens involved in the arrangements find their way in solving problems.

Particularly for the legal arrangement regarding mining damage, there was a need to reach out to the victims and inform them about the arrangement. The arrangement was brought to attention through local media, by the lawyers involved and by the executive

bodies responsible for restoring the damage. Usually it is not the task of the LAB to promote legal aid.

On an *operational* level the arrangements require higher capacity of the LAB. It requires new employees to be hired; a special team is executing the special legal aid arrangements. Also the arrangements do not fit in the regular IT-system, so they demand more administrative /manual work for employees and for the lawyers involved.

4 Benefits and challenges of special legal arrangements

This section will draw some preliminary conclusions about the benefits, challenges and lessons learnt of special legal aid arrangements.

4.1 Benefits and challenges

Relief victims from burdens

The legal aid arrangements foremost relief victims from burdens because a lawyer can aid and represent them. Since the arrangements lack a means test, citizens have clarity and the certainty no payments have to be made. Particularly after a disruptive event with consequently a complex of legal and administrative problems this help and clarity is seen useful. Evaluation of the childcare benefits arrangement shows that respondents in general are positive about the legal aid and the services of the LAB.¹¹ Evaluation of the mining damage Groningen arrangement shows that respondents are very satisfied about the work their lawyer has done so far.¹² This being said, the way to receive actual compensation of harm in both scandals remains slow and complicated.

Ability to quickly signal and fix problems

Legal aid arrangements facilitate close contact between key players. According to results of the mining damage arrangement lawyers are positive about the LAB; they appreciate the direct contact and (thereby) ability to signal, prevent and solve problems. Lawyers also seem to be satisfied with the services of the LAB in the childcare benefits arrangement.¹³ Close contact on a regular basis helps to signal and (when possible) resolve problems.

Ability to improve services by the LAB

Special legal aid arrangements enables the LAB to make a positive contribution to citizens in a difficult and disruptive situation. By practising new activities on a small scale in these arrangements the LAB can improve its services and adjust the arrangement when needed. It also provides the LAB insights into how these new activities can be implemented on a larger scale and which issues that may cause, e.g. how they should be automated (in the IT-systems). Legal aid arrangements, by their small scale, thus enables the LAB to practise new activities to help people with severe problems. Because of their goals, special legal aid arrangements stimulate a people-oriented approach of the ordinary work of the LAB.

The challenges and lessons learnt are practical and systematic.

More (manual) work

As mentioned above, on an operational level, special legal aid arrangements contain practical challenges. By hiring new employees the arrangements remain executable.

Potential tension between arrangements and the ordinary system: a need for policy

¹¹ Raad voor Rechtsbijstand, *Evaluatie Herstelregelingen Kinderopvangtoeslag (HKT)*. <https://www.raadvoorrechtsbijstand.org/kenniscentrum/projecten/hkt/>.

¹² Raad voor Rechtsbijstand, *Evaluatie regeling Mijnbouwschade*. <https://www.raadvoorrechtsbijstand.org/kenniscentrum/projecten/mijnbouwschade/>

¹³ Raad voor Rechtsbijstand, *Evaluatie Herstelregelingen Kinderopvangtoeslag (HKT)*. <https://www.raadvoorrechtsbijstand.org/kenniscentrum/projecten/hkt/>.

On a systematic level the tension between the arrangements and the ordinary system of legal aid could be a concern. Legal aid arrangements tend to be generous in order to help victims of harm, whereas the ordinary system of legal aid seeks a balance between access to justice and financial control. The ordinary system of legal aid, however, also contains severe cases with victims of harm. Although the amount of certificates issued in special legal aid arrangements remain relatively small, this tension will nevertheless ask to overthink in which situations and circumstances special legal aid arrangement with a generous approach as an instrument is appropriate. This overthinking would preferably lead to policy. This policy could particularly cover how to deal with groups that are primarily not of limited means and would therefore not eligible for legal aid. Policy should also cover the topic of lawyers that normally do not participate in the legal aid system and work on a commercial basis. Lawyers receive a lower fee per hour which can make it less attractive to participate in the arrangement. A shortage of lawyers willing to participate can conflict with the want to arrange legal aid for citizens involved and a lower fee could also not be in the best interest of the victims.

The Dutch Bar Association has put these concerns on the agenda. The Bar argues that the Legal Aid Act is not intended to provide free legal aid to victims of mass harm. A separate arrangement, such as a fund, would be more suitable. A fund would also improve access to legal protection and ensure better "equality of arms," so that victims are not at a disadvantage compared to the state, which often uses extensive legal resources.¹⁴ The LAB underlines the need for policy on this topic. This need is related to a broader discussion on if and when compensation of harm should be arranged.

Parliamentary control

Legal aid arrangements can concern large groups of citizens often in a precarious situation, is often about (politically) sensitive issues and sets fees for lawyers that are normally laid down in law. The parliament is regularly informed about the progress of the legal arrangements with letters about the specific compensation operation that takes place. Legal aid arrangements are not tackled from the perspective of the legal aid system and the previous mentioned challenges as a whole. Furthermore the parliament does not have to formally agree with the arrangement drafted by the LAB. In the process of establishing the legal arrangement on mining damage Groningen the parliament filed a resolution that requested the regulation to be sent to the parliament for approval.¹⁵ There is as yet no set structure for involving the parliament in special legal aid arrangements.

4.2 Alternatives?

Special legal arrangements are at this moment the way that is chosen to assure legal aid in procedures that aim to compensate citizens after mass harm. Legal aid follows the approach that is chosen; administrative law procedures aimed to individually assess all cases. Nevertheless, one could think of other ways to assure compensation after mass harm, e.g. through civil law procedures. One option is collective action where a foundation represents a group of victims. The present Legal Aid Act does not provide in this option. Another option is the establishment of a legal aid fund, as the Bar suggested.

¹⁴ Nederlandse Orde van Advocaten (2023), *Wet op de rechtsbijstand op oneigenlijke grond ingezet voor 'Groningen'*. <https://www.advocatenorde.nl/nieuws/wet-op-de-rechtsbijstand-op-oneigenlijke-grond-ingezet-voor-groningen>

¹⁵ Ministerie van Justitie en Veiligheid (2023), *Beslisnota bij Kamerbrief inzake voorhang Subsidieregeling rechtsbijstand en aanverwante kosten Tijdelijke wet Groningen*. https://app.1848.nl/document/overig_kamerstuk/78548

4.3 In conclusion

Special legal aid arrangements to facilitate legal aid have several practical challenges and systematic questions. Above all, they are a way to flexible and relatively swiftly help citizens in a precarious situation with severe, complex and multi-levelled problems.