

Steps towards an evidence-based legal aid system

Jin Ho Verdonschot, Carla van Rooijen, Susanne Peters, Corry van Zeeland (Knowledge Center Dutch Legal Aid Board)

1. Finding out what works

a. Introduction: a learning system

How well does the legal aid system perform for citizens, professionals, and society? This is a key question for any legal aid system, and not just for administrators and policy makers who seek to improve and maintain. The question is relevant for discussions about budgets, when defining and evaluating the social impact of legal aid, in discussions about quality of legal aid services and models for sustainably organising those, when seeking to identify effective interventions, services and processes; and so on. But what data do we have to answer it?

Systematically collected objective data that provides a solid basis in any of these discussions is scarce. There are the annual reports that focus on output indicators: the number of certificates granted, the categories of legal problems experienced by citizens who are eligible for legal aid, the number of people who reach out for legal advice, the channels they use, etc. Little is known, however, about how citizens, professionals in the system, and lawyers experience legal aid services, how they experience the support during the process (often in the midst of a crisis in the lives of citizens), and how the outcome supports citizens to continue in their lives.

Regulation and policy for quality are a primary and ubiquitous control for these elements. As such, the quality of legal aid is often very much in focus. Requirements for specialisation in terms of minimum volumes, permanent education, etc. are common measures for this. From the perspective of citizens this, of course, is important, but probably not sufficient. A literature review indicates that the criteria for good legal aid cover much broader domains. Aside from the regular quality assurance, key criteria for quality of legal aid include person-centeredness, an integrated perspective, efficiency, and continuously learning what works (Peters & Van Zeeland, 2021).

Periodical legal needs surveys provide an overview of the incidence of legal problems in everyday life and the paths to justice people follow (see for example Genn 1999, The Canadian Legal Problems Survey, 2021,¹ Ter Voert & Hoekstra, 2020, Gramatikov et al., 2021). However, they focus on the overall population instead of the part of the population that is eligible for legal aid, and, moreover, provide limited insight in the performance of legal aid systems.

¹ <https://www.justice.gc.ca/eng/rp-pr/jr/survey-enquete.html>

The Knowledge Center of the Dutch Legal Aid Board (further: LAB) is currently developing a feedback loop for the legal aid system, starting with its own services to citizens and the services of lawyers. Feedback loops are a critical element of any system (Meadows, 2015), more specifically for learning and improving, via monitoring, and evaluating, and for early signalling of bottlenecks. They create ways in which the outputs of a system serve as inputs for the same system, enabling the system to feed back into itself. The relevant outputs of the legal aid system include experiences of citizens, of professionals working in the system, of lawyers, the outcomes it generates and the impact of these outcomes, the time spent by lawyers per case, the compensation per case, etc. The outputs are essential as inputs to further optimise the functioning of the legal aid system.

Data collection via monitoring and evaluation is an essential part of feedback loops. Frameworks for measuring and evaluating broader parts of the justice system have been developed and applied in the past (see for example Gramatikov et al., 2011). The Knowledge Center, however, aspires to create a feedback loop that is sustainably implemented in the legal aid system so feedback is collected on an ongoing basis covering the full range of services delivery. The feedback loop combines direct feedback about citizens' experiences with services, processes, interactions, and the outcomes they obtained; experiences from the legal aid lawyers who deliver their services and more directly interact with the legal system; and experiences from other professionals working in the legal aid system. This feedback is combined with more objective data about legal problem types, lead times, geography, etc. that can be captured from data in systems. These data constitute the basis of a 360-degree feedback loop that can be further enriched with data indicating time spent by a lawyer, mid-term and long-term effects of outcomes, quality measured by peer review, etc.

Systematically collected feedback and other data, thus help to monitor and evaluate the legal aid system. Services can be improved, bottlenecks can be identified early, and it supports a systems evaluation. Additionally, it enables testing of assumptions that are implicitly or explicitly present in our systems (i.e. legal aid laws, procedures, and practices).

b. Testing assumptions in practice

Self-efficacy is a broadly used term to describe the ability of citizens to take on legal problems by themselves, without relying on support from the State. Self-efficacy of citizens seeking legal aid is implied by articles 12 and 28 of the Dutch Legal Aid Law (Wet op de rechtsbijstand, further: Wrb). Legal aid is not granted for cases in which the applicant can reasonably be expected to handle the issue themselves or with support other than legal support (administrative support, translation support, social support, etc.). The law does not consider the actual level of self-efficacy, but a sufficient level of self-efficacy is assumed. As such, the assumption seems to have a more normative dimension (Schepel & De Leest, 2019). Recent literature, however, is critical about how the level of self-efficacy that is usually projected onto citizens corresponds with reality (see for example WRR, 2017).

After the revelation of a large-scale childcare benefits scandal in which the Dutch Tax Authority falsely accused thousands of families of fraud, the assumption of self-efficacy in the public legal aid domain is under further scrutinization. A special, temporary arrangement called the Ratz (Regeling Adviestoevoeging Zelfredzaamheid; Arrangement for Advice Certificate Self-efficacy) was created. Under this arrangement, citizens receive legal advice, whereas under the Wrb 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. Goals of the Ratz are to develop a better understanding of the challenges that citizens face in situations where the system assumes a sufficient level of self-efficacy.

The Knowledge Center monitored and evaluated the Ratz. The results are part of a larger process that forms the total feedback loop, and as such the approach forms a good example of the potential for creating a learning system. This paper specifically focuses on the learning potential in relation to the assumption of self-efficacy as implied in the Wrb.

c. What follows

This paper continues by first describing the Ratz more elaborately, in order to provide the context to the arrangement (Section 2a). For the monitoring and evaluation, several research methods were used. The experiences indicate that they provide suitable building blocks for designing a feedback loop for the legal aid system (Section 2b). The Ratz study was part of a larger process that creates a proper feedback loop and via a special committee the system data are fed back to the system (Section 2c). The Ratz monitoring and evaluation provide some lessons learned about designing, implementing and using feedback loops are presented: what are suitable methodologies (Section 3a), and how different elements of the legal aid system can be connected in a more encompassing feedback loop (Section 3b)

2. The Ratz

a. Description and purpose

The Ratz was designed by the LAB, the Dutch Bar Association (Nederlandse Orde van Advocaten), and the Legal Services Counters (het Juridisch Loket, further: LSC). The LAB administers this arrangement, the Knowledge Center monitored and evaluated the Ratz, and the results were shared with a special Committee (Advice Committee Self-Efficacy Legal Support and Legal Aid) that will advise the LAB, the Dutch Bar Association and the LSC. This advice will focus on the appropriate allocation of the cases that currently receive legal aid under the Ratz.

At the time of closing the manuscript of this paper, the special Committee is conducting additional interviews and preparing its advice. The advice is expected during the fall of 2023.

The Ratz started per 1 July 2021 and was recently prolonged until 1 April 2024. Under the Ratz, citizens seeking legal aid can get a referral from LSC to a lawyer if their case meets specific criteria. The lawyer then applies for a special (Ratz) certificate. The application process includes a diagnostic form filled out by LSC and an application form filled out by the lawyer. Both are sent to the LAB. If the LAB approves the application, the lawyer receives a certificate. The lawyer then provides up to three hours of legal aid.

The criteria for the Ratz consider both the level of self-efficacy of citizens and characteristics of their situation and problem. A minimal requirement is that the nature of the case is out of scope for the regular legal services that LSC and other first-tier legal service providers provide, and also for regular legal aid subsidies. Furthermore, one of the three following criteria needs to be met: 1) the case is not eligible for any other legal aid arrangement, 2) there are indications that the citizen, contrary to the assumption under law, has an insufficient level of self-efficacy, and/or 3) the case can be considered complex. These criteria are further illustrated in the arrangement with some prime examples that mostly indicate characteristics of the situation rather than of citizens. Examples include situations that are too complicated or harrowing to expect self-efficacy from citizens; government bodies that are less responsive towards citizens than could be expected of them; and situations where only a further escalated problem would warrant legal aid, but timely intervention can prevent that escalation and the accompanying serious consequences.

The criteria for the Ratz are described in general terms, purposefully leaving a broader margin of appreciation in order to evaluate eligibility in individual cases. This helps to identify the legal problems and situations in which the assumption of self-efficacy of citizens is problematic. To accumulate experience and knowledge, LSC and LAB have installed dedicated operational teams for the Ratz. These teams remain in close contact and discuss cases through regular meetings.

b. Monitoring and evaluating the Ratz

The Knowledge Center monitored and evaluated the Ratz, building on earlier experiences.² Focus was on assessing which citizens made use of the services under the Ratz, what situations they are in, what type of support was delivered, and what the experiences of citizens and professionals are. The results provide input for the earlier mentioned special Committee.³

The research design aimed to develop a 360-degree picture of the practices under the Ratz. Several research methods that the Knowledge Center developed and used in earlier

² The KC currently also monitors and evaluates special arrangements concerning citizens who fell victim to the previously mentioned childcare benefit scandal, and concerning divorce.

³ The Committee currently prepares its advice. It uses the monitoring and evaluation report the KC produced, and includes data from interviews and other reports as well. The advice is not presented yet at the finalisation of this paper and is expected to be made public at the beginning of the fall 2023.

monitoring and evaluation efforts were adapted to this end. The goal was to create a closed feedback loop as depicted in the illustration below.

Various research methods were used for data collection. These methods are briefly described below.

Characteristics and experiences of citizens

Who are the citizens that according to the current laws and policies are assumed to have a sufficient level of self-efficacy, but may need legal aid? The Knowledge Center used online surveys, and interviews for this part of the feedback loop.

Data about the experiences of citizens during the legal aid provision under the Ratz were collected via online and telephone surveys, and interviews. The questions were both closed and open and asked about the experiences with the services provided by LSC during the diagnosis phase, as well as about the legal aid provided by the lawyer. Collection and analysis of quantitative data were used to enrich the survey data.

Additionally, indications of citizens' level of self-efficacy were collected using the generalized self-efficacy scale (Schwarzer & Jerusalem, 1995). With these data the citizens using the Ratz could be compared to the general population. The answers to the self-efficacy questions from the Ratz were compared with a weighed dataset acquired in a population-wide legal needs study in the Netherlands (Ter Voert & Hoekstra, 2020). This gave insight into the question whether self-efficacy among citizens using the Ratz was lower than among the general population. These data enabled falsification of the assumption of sufficient self-efficacy of the Wrb.

To develop insight into the impact of legal aid under the Ratz, and thus its effectiveness, respondents were also asked if they felt like their case was solved through the provided legal aid. Subjective evaluation of outcomes may have its limitations, but citizens' perspectives are an essential perspective and proxy (Verdonschot et al., 2008).

Characteristics of problems and situations

What are the problems citizens in the Ratz experience and what are the circumstances? The data for this part of the feedback loop were primarily collected through analysing 1219 diagnostic forms. These contained a concise description of the citizens' legal problems.

The descriptive data from diagnostic forms were summarised, classified and enriched with data from the LAB. The latter made it possible to categorise the cases according to subsidy code (an indication of the type of legal issue) and thus enable standard classification. Additionally, data about the (type of) other party involved could be added. This added structure to the large amount of qualitative data from the forms and thus helped to sketch a more complete picture of the types of cases within the Ratz.

The data allowed for a comparison between the expected type of cases for the Ratz and the actual influx, testing whether expectations about the Ratz were true or false. Analysis of the cases by other party involved showed whether certain other parties were over-represented in the Ratz and which legal problems arose.

Via surveys that lawyers received for each case, the reasons why legal aid under the Ratz was needed in a specific case were collected and combined. The brief survey had a multi-select question with options like 'opposing party is non-responsive', 'high emotional burden for the client', 'large procedural complexity' and 'early intervention needed to prevent escalation'. These data were linked to all the other case data previously described, providing quantitative insight into the situations of citizens who received legal aid under the Ratz.

Experiences and activities of lawyers

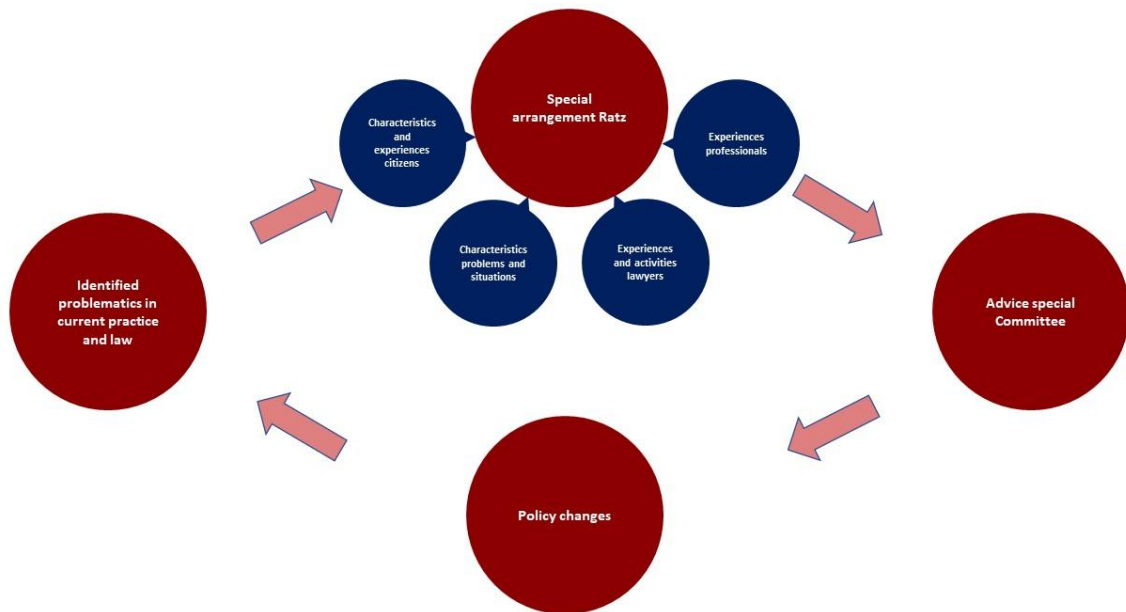
How do lawyers experience the Ratz and what activities do they perform to deliver legal aid? Case-specific surveys were used to collect this data from lawyers.

The case-specific surveys, which were short and contained mainly multiple-choice questions, were essential for collecting data about the nature and efficiency of the legal aid provided under the Ratz. Per case, lawyers listed what activities they undertook and what services they delivered. Lawyers also filled out how much time they had spent on a case. Based on these data, a better understanding of the actual legal aid and time efforts was developed. The data also allowed for regression analysis to identify the amount of time lawyers need for specific activities.

c. Feeding data back into the system

The Ratz has been monitored and evaluated during the period from 1 July 2021 until 31 March 2022. Data from 122 citizens, 770 lawyers' experiences, and 1219 diagnostic forms were combined with data from the LAB. The data have been structured, analysed, summarised, and assembled into an evaluation report (Peters et al., 2023), that was shared with the Advice Committee.

The committee will deliver its advice to the LAB, the Dutch Bar Association and the LSC to recommend changes in policies and assess the potential legislative changes that may be required.



3. Working towards an evidence-based legal system

a. Lessons for systematic monitoring and evaluation

The experiences with the Ratz feedback loop indicate the usefulness of systematically collected data from different perspectives for a learning system. By designing a 360-degree feedback loop and using a mix of methods and instruments, deeper insights were gained into citizens, their problems, situations and experiences, as well as deeper insights into the experiences of professionals and lawyers and the activities they undertake. Due to the carefully designed research instruments that build on earlier validated instruments, the relatively large sample size, and the systematic approach to data collection, structuring and analysis, these data combined form a robust collection of practice-based evidence.

One of the key strengths of the Ratz feedback loop was that data could be combined ‘around’ citizens. They, in a way, were the unit of analysis: who are they, what are their problems, what is their situation, what support (activities and time input) did they receive, what are the experiences of the lawyer providing the support, what did the outcome do for them to move further in life? In essence, a richer and quantitative picture of people, their problems, and their paths to justice was sketched, which ultimately will inform evidence-based policy.

Although the monitoring and evaluation of the Ratz was set up with a more incidental, project-based data collection infrastructure, it offers a blueprint for structural systematic monitoring and evaluation. Collecting data from the perspective of citizens, lawyers, and other professionals working in the legal aid system can help to assess the functioning of the legal aid system. Ultimately, after some small complements and maybe adaptations, such

data are essential for answering the question how well the legal aid system performs for citizens, professionals, and society. It could further help to prevent that unwanted situations remain under the radar, by being an early warning system; a red flag system of sorts.

Due to its incidental set-up, the Ratz monitoring and evaluation was set up in a way where more “manual” actions were required than strictly required. This mostly concerns issuing of surveys, structuring of data, and combining it. With adequate data infrastructures, processes and system triggers, much of these actions could be automated, reducing the running costs.

b. Feedback loops that connect all parts of the system

The LAB and LSC cooperated closely under the Ratz, making it possible to collect and combine feedback loop data from both first- and second-tier legal aid providers. Citizens thus could be put centre stage and followed throughout large parts of their path to justice.

As mentioned before, most of the available data is output data. All of this data is structured per institution: legal aid boards have their data, and so do legal services counters, lawyers, mediators, courts, social counsellors, and many more, with additional data from research adding to the pile. At the very best, this offers a fragmented image of the legal aid system.

Coordinated and combined data enables evaluation of how provisions work out for citizens. Do they make for a good and effective path? Or do they create too much bureaucracy, forming a maze in which the average citizen gets lost? System-broad monitoring and evaluation is essential to identify the first hurdles for access to justice.

References

Genn 1999

H. Genn, *Paths to justice. What people do and think about going to law*, Hart 1999.

Gramatikov et al., 2011

M.A. Gramatikov, J.M. Barendrecht and J.H. Verdonschot, "Measuring the costs and quality of paths to justice", *Hague Journal on the Rule of Law* 2011.

Gramatikov et al., 2021

M.A. Gramatikov, R. Núñez, I. Banks, J.M. Barendrecht, and J. Brouwer, *Justice needs and satisfaction in the United States of America 2021*, IAALS 2021.

Meadows, 2015

D.H. Meadows, *Thinking in systems*, Chelsea Green Publishing co 2015.

Peters et al., 2023

S.L. Peters, C. van Rooijen & C.M.C. van Zeeland, *Evaluatie Regeling Adviestoevoeging Zelfredzaamheid*, Kenniscentrum 2023 (forthcoming).

Peters & Van Zeeland, 2021

S.L. Peters and C.M.C. Van Zeeland, *Towards a modernised legal aid system in the Netherlands*, paper presented at Ilag conference 2021.

Schepel & De Leest, 2019

E. Schepel & B. de Leest, Een holistische kijk op zelfredzaamheid, in: D. de Wolff (ed.), *Toegang tot het Recht. Beschouwingen aangeboden aan Mies Westerveld*, Boom 2019.

Schwarzer & Jerusalem, 1995

R. Schwarzer and M. Jerusalem, *Generalized self-efficacy scale*, in: J. Weinman, S. Wright and M. Johnson (eds), *Measures in health psychology: a users' portfolio: causal and control beliefs*, NFER-Nelson 1995.

Verdonschot et al., 2008

J.H. Verdonschot, J.M. Barendrecht, L. Klaming, L., & Y.P. Kamminga, *Measuring access to justice: The quality of outcomes*, TISCO 2008.

Ter Voert & Hoekstra, 2020

M.J. ter Voert and M.S. Hoekstra, *Geschilbeslechtingsdelta 2019*, WODC 2020.

WRR, 2017

WRR, *Weten is nog geen doen*, WRR 2017.