

Fact sheet Legal Aid

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In its answers the Dutch Government states that “free legal aid is available to everyone below a specific income, including victims of domestic violence” (Q 8 and 10). This is not entirely correct. A better description is ‘subsidised legal aid’ (as mentioned by the government in its answer to Q.12).

In this fact sheet we explain the Dutch legal aid system, and give our recommendations to improve the legal aid to victims of gender-based violence.

General rules for legal aid

According to the system of subsidised legal aid, citizens are entitled to subsidised legal aid if they have an income below a certain level. This applies to civil, administrative as well as criminal cases. The height of the contribution one has to pay her/himself depends on the family income. The own contribution runs up to €90. Cases against the partner form an exception: in this case only the individual income counts. This means that in cases of domestic violence, the income of the partner is not taken into account. In criminal cases the suspect is entitled to free legal aid, if he is taken into custody independent of the income. In other cases the general rules for subsidised legal aid apply.

Legal aid for victims

Victims are generally entitled to subsidised legal aid and, under certain conditions, to free legal aid, notably:

- Victims who claim compensation within the criminal case *and* are entitled to subsidised legal aid (that is has an income below a certain level), do not have to pay the own contribution for the lawyer *in relation to* (and only in relation to) this claim;
- Victims of serious assault and sexual offences are entitled to free legal aid (independent of their income), on the conditions that they suffered severe physical or psychological damage, and that the case is brought before court. If the case is not (yet) brought before court, the general rules apply (since April 2006).

Draft law on the Banning Order for perpetrators of domestic violence

The Draft Law on the Banning Order for Perpetrators of Domestic Violence provides for free legal aid to perpetrators who are banned from their house (independent of their income) with regard to the procedures on the banning order. The partner who remains in the house is not entitled to free legal aid. For her, the general rules apply.

Recommendations

1. Victims of gender based violence (including domestic violence, sexual violence and trafficking) should be entitled to free legal aid in an early stage. It is important that victims can get legal advice on their legal position and possibilities before the decision whether or not pressing charges. There have been a number of pilot projects to provide free legal aid to victims of sexual violence in an early stage. These have been very successful, but are not followed by the government. We recommend that free legal aid in early stage should be structurally available for victims of gender related violence (see p. 32-33 Shadow-report).
2. The Draft Law on the banning order for perpetrators of domestic violence, should be amended in order to entitle the partner who remains in the house to free legal aid on the same footing as the perpetrator who is banned from the house.