

Country report The Netherlands Bar

Quality Management

The Dutch Act on Advocates delegates the responsibility for improving the quality of lawyers' services to the general council of the Netherlands Bar. The general council has announced that developing a policy on quality management is one of its priorities.

In 2017 a bye law on quality assessment was adopted. The bye law requires lawyers to take part in a form of structured feedback (interview, peer review or inter collegial meetings). Other (proposed) measures to improve the quality of lawyers' services include (i) the introduction of an experts' register which will make it easier for clients to assess the fields of expertise of a lawyer and to verify that the lawyer has fulfilled his continuous training obligations, and (ii) the introduction of requirements to promote specialization.

The entry into force of the provisions in the bye law is dependent on the adoption of necessary changes to the Act on Advocates. This is expected later this year.

On the first of January 2019 the legal practice area register has been introduced. Lawyers who have completed the vocational training are required to register for a minimum of one and a maximum of four legal practice areas in which they are especially knowledgeable. To be registered for a legal practice area the lawyer will be required to obtain 10 points per year in that area.

Vocational Training

The Dutch system of vocational training for lawyers is in transition to a new format. This development was motivated by the observation that growing diversity within the bar, ICT related developments, globalization, further juridification of society and other aspects impact the work of a lawyer. The question raised was: how to develop a training which pro-actively addresses these developments and at the same time offers a sound education for all trainee lawyers, independent of (the size and focus of) their firm or the area of law in which they practice?

In the new training scheme focus will be more on practical training of lawyers skills and competences. There will be a stronger emphasis on the daily practice of a trainee lawyer to ensure that the knowledge acquired in the training will be effectively used in practice, and vice versa, that examples from the daily practice can be used in training sessions. One of the pre-conditions of the new training scheme is that every trainee has mastered a certain minimum level of cognitive legal knowledge.

The aim is to have the improved vocational training available to trainee lawyers by September 2020. The Netherlands Bar is currently working on the preparations for the implementation of the new scheme (building a new curriculum, enhancing the involvement of the Bar, accreditation of training providers).

Digitalization of court proceedings

For the past few years the Council for the Judiciary has worked on digitalizing court procedures. The Netherlands Bar has closely monitored this development and has made suggestions for improving the system. Digitalization of proceedings was carried out in phases, the system was firstly introduced for civil law, administrative law and supervisory procedures. However, in April 2018 the Council of the Judiciary announced that the system will have to be reset.

On 14 September 2018 The Netherlands Bar has called upon the minister for Legal Protection to provide more guidance and to facilitate cooperation between all parties involved to ensure that a new system will be suitable for all. A worrying trend in this regard is that different courts and governing

bodies develop separate ICT system to allow for digital proceedings. The minister has not yet responded to the request.

Since the announcement of the reset the Council for the Judiciary has worked on the development of a basis plan for civil law and administrative law procedures. The Netherlands Bar will be involved in further development of the plans. Before the 1st of July 2019 the Council of the Judiciary will have to submit the plan for a feasibility study. If the feasibility study is positive, hopefully digitalization of the first cases can be started by September.

Legal Aid

For several years, there has been an ongoing discussion about the Dutch legal aid system. The discussion focuses on the scheme itself and specifically the remuneration for lawyers who provide legal aid. In 2017 the Minister for Justice and Security asked an independent Commission, chaired by Mr. Van der Meer, a member of the judiciary, to evaluate the remuneration for lawyers who provide legal aid under the scheme. The Commission concluded that the legal aid budget is insufficient, and has been for years. A structural budgetary increase is necessary to ensure that those in need have access to legal aid and to provide a fair remuneration for lawyers working under the scheme. However, the Minister for Legal Protection has indicated that an increase of the budget is not possible and has invited all relevant stakeholders (including the Netherlands Bar) to discuss alternative solutions.

In November 2018 the Minister for Legal Protection presented a plan for restructuring the legal aid system. His aim is to solve disputes as much as possible outside of court and without specialized legal assistance from a lawyer. The minister plans to involve other legal and non-legal professionals in the legal aid system through public procurement. Low income clients will in future have to prove the need for legal aid before they can file an application. In addition it looks like the contribution for low income clients will be increased.

The necessary budget needed for qualitative legal aid, as was concluded by the Commission Van der Meer, will not be provided. Only if the new system leads to fewer legal aid cases the Minister might decide to increase the remuneration for legal aid lawyers.

Concerns about the plans and the possible consequences for the legal aid system and access to justice are shared not only by lawyers but throughout society. Academics and media are very critical of the plans. To express their concern lawyers are continuing to protest against the plans.

Legal professional privilege/professional secrecy

A revision of the law on criminal procedure is ongoing. In the process proposals have been made concerning changes to the provisions of legal professional privilege/professional secrecy. The proposals concern primarily provisions regarding witness hearings and searching and confiscating documents. The Netherlands Bar is involved in the consultation of the legislative proposals and has submitted input on the proposals. One of the major issues is who, in case of searching of premises, is the competent authority to assess documents in light of legal professional privilege/professional secrecy. The Netherlands Bar is of the opinion that the competence should lie with independent officials and that in any case it should be avoided that prosecutors or investigative officers have access to these documents.

On 19 December 2018 a draft version of the legislation implementing DAC6 was published for consultation. The Advisory Committee on tax issues from the Netherlands Bar has written a response to the proposals (with input from other Bars, coordinated by the CCBE). The Directive contains a mandatory notification obligation for intermediaries on possible aggressive cross border tax schemes.

In the draft lawyers are considered to be intermediaries but the principle of legal professional privilege/professional secrecy is respected by declaring the relevant article (article 53a) of the General Tax Law applicable.

In 2017 the Ministry of Finance announced the intention to redraft/clarify article 53a of the General Tax Law. At this point it is unclear what the ministry has in mind. In the case the scope of legal professional privilege/professional secrecy is limited, this will have consequences for the notification obligation under DAC6.

Representation in divorce proceedings

At present representation in divorce proceedings is a reserved activity for lawyers. However, there is a debate going on about abolishing mandatory representation in divorce proceedings which would mean that it is no longer necessary to be represented by a lawyer when filing for divorce. Another option that is being considered is to introduce the involvement of a so called family lawyer. One lawyer who represents all parties (including children) in a divorce procedure. Discussion point is how to deal with the provisions concerning partiality and conflict of interest. The Netherlands Bar is of the opinion that representation by lawyers in divorce proceedings is essential and should not be abolished.

Final remarks

In more general terms the Netherlands Bar sees a trend, initiated by the Ministry of Justice, to decrease the involvement of lawyers in legal disputes in favor of other professions (for example psychologists, mediators). The implied message expressed is that lawyers contribute to a contentious judicial system and that less contentious solutions should be preferred. The Netherlands Bar is concerned about these developments because it harms the way the profession is perceived by the public as it wrongly assumes that lawyers would not seek an out of court solution. The Code of Conduct expressly requires a lawyer to find an amicable solution if possible and only resort to a contentious procedure if there is no better option. The Netherlands Bar continuously stresses this fact and works to ensure the involvement of qualified legal professionals in legal disputes.



The president of the The Hague Bar and lawyers protesting against the legal aid plans in front of the Court House.