

National report – Norway

Prepared for the International Legal Aid Group conference, The Hague 2013

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1 The Norwegian legal aid scheme

1.1 Brief overview

In Norway, publicly funded legal aid is mainly provided thorough a juricare scheme. Lawyers in private practice provide legal aid to persons granted such aid, and are remunerated through the government scheme. The conditions for granting legal aid are strictly regulated in the legal aid act and the criminal procedure code.

In addition to the juricare scheme, there also exist quite a few alternative legal aid providers, see section 7.

I will be focusing on the legal aid scheme for legal aid in civil matters. Legal aid in criminal matters, both to the accused and the victim, is mainly regulated by the criminal procedure code. In most criminal cases, the accused will be entitled to assistance from a publicly funded legal aid lawyer.² Cases regarding compensation for the victim are incorporated in the criminal proceedings, by either the prosecuting authority or the victims own legal aid lawyer.

1.1.1 Administration of the legal aid scheme for civil matters

The Norwegian legal aid scheme is administered by the Ministry of Justice, the Norwegian Civil Affairs Authority, the County Governors, and the courts. In addition, the lawyers operating under the scheme are entitled to make most decisions on granting of legal aid by themselves.

The Ministry of Justice are responsible both for the annual administration of the public legal aid scheme, such as budgeting and reports, and the reform work done on the scheme. As most of the public legal aid scheme is based on the legal aid act, most changes will need a parliamentary act in order to change the scheme. The financial criteria and the rates of remuneration are prescribed in administrative regulations, and can thus be changed without having to go through the legislative process. The Ministry of Justice does in principle not handle individual cases regarding decisions on legal aid.

The civil affairs authority is the highest decision making body for individual applications for legal aid. The civil affairs authority handles complaints regarding rejection of legal aid applications from the County governors, and complaints regarding the rates of remuneration granted to the lawyers in individual cases. In addition, the The civil affairs authority has the responsibility of coordinating the practice of the County Governors, to ensure that their practice is as uniform as possible.

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² Criminal procedure code § 100, cf. §§ 96-99.

The County Governors, (almost) one in each of Norway's 19 Counties, are the first instance decision making body for application on legal aid. They handle mostly applications regarding legal aid outside the courts, and applications where there is a question of using discretionary power to grant legal aid regardless of whether the regular criteria for granting legal aid is fulfilled. The County Governors also handle the payments to the legal aid lawyers. A new system for handling applications for legal aid through an electronic system has greatly reduced the processing time, enabling the the County Governors to handle applications delivered through this system almost immediately, and refunding the lawyer fees within days.³ However, only about 30 % of applications for legal aid are delivered through this system.⁴

The lawyers themselves are entitled to grant legal aid outside court if all the criteria for legal aid clearly are fulfilled. Most applications for legal aid outside of courts are handled in this manner. In 2012, 15 521 of 19 014 grants for legal aid where decided by the lawyers themselves.⁵

The courts decide on legal aid applications for legal aid before the courts. The decisions are made by the judge preparing the case.⁶

1.1.2 Administration of legal aid outside the public legal aid scheme

As will be described in section 7, there are also other publicly funded legal aid initiatives in Norway.

I will be focusing on those fully or partly funded by the Ministry of Justice. Most of these they are in general quite independent. Through public calls for grants for legal aid, some control of these initiatives is exercised by the MoJ.

In addition to the legal aid initiatives funded by the MoJ, legal aid is also given by a wide range of other schemes of initiatives – from labour unions, special interest organizations, or ombudsmen.

There is no central coordination of or policy for the wide range of commercial, public and not-for-profit legal aid providers.

2 Financial eligibility

In most matters, there is a financial eligibility criterion which must be met if legal aid from the public legal aid scheme is to be granted. The financial eligibility criteria scheme is given in the legal aid act with regulations. In cases concerning certain matters considered to be of particular high importance, there are no such criteria, see section 3.1.

A person must have below 246 000 NOK (32 278 €) in gross annual income, or, if co-habitant, the gross annual income of the household must be below 369 000 NOK (48 417 €), in order to be eligible for legal aid.⁷ The average gross annual income in Norway is currently 470 900 NOK, or 61 788.67 €. ⁸

³ Based on information from the County Governor of Oslo and Akershus

⁴ Based on information from the County Governor of Oslo and Akershus

⁵ Statistics from the Civil Affairs Authority

⁶ Cf Regulation to the legal aid act section 4-1.

⁷ Cf Regulation to the legal aid act section 1-1.

⁸ <http://ssb.no/arbeid-og-lonn/statistikker/lonnansatt/aar/2013-03-20#content>

In addition, a person must have net assets below 100 000 NOK (13 121 €). Assets which cannot easily be realized can be exempt from this assessment.

If either of these financial eligibility criteria is not fulfilled, legal aid can be granted according to a discretionary exemption clause in the legal aid act.⁹ However, this is rarely being used.¹⁰

3 Legal aid entitlement

Legal aid regulated by the legal aid act has criteria as to what kind of cases one is eligible for legal aid in. The act separates between legal aid cases with means testing (where the financial eligibility criteria apply) and cases without means testing.

3.1 Matters where legal aid is granted without means testing

In certain matters considered to be of special importance, legal aid is granted without means testing.¹¹ This includes cases like

- Immigration cases
- Child welfare cases
- compensation or redress for unlawful criminal prosecution,
- Claims for compensation against a perpetrator of a criminal offence
- Domestic violence cases
- Cases regarding forced marriages.
- There are also cases where coercion is involved, for instance in psychiatric health care
- cases concerning conscientious objection to military service

3.2 Matters where legal aid is granted with means testing

In other matters, legal aid is only granted if the financial criteria are fulfilled.¹² These matters are matters considered to be of high importance to the welfare of the person concerned.

These include among others such cases as

- Marital cases
- Custody cases
- Personal injury cases
- Tenancy cases regarding termination of contract and eviction
- Employment cases regarding unfair dismissal
- Compensation for victims of violent crimes and
- Complaints/appeals concerning social security

3.3 Legal aid in other matters

In other matters than the ones specified in the legal aid act, legal aid will normally not be granted. There is an exemption clause from this, allowing the County Governor or the court to grant legal aid in any legal matter. However, the use of this exemption clause is very limited.¹³

⁹ Cf legal aid act section 11 subsection 3 and section 16 subsection 3.

¹⁰ Cf Bentsen og Rønning *Bruken av unntaksbestemmelsene i lov om fri rettshjelp* Universitetet i Oslo, Bokserien 1/2008 Oslo 2008.

¹¹ Cf legal aid act section 11 subsection 1 and section 16 subsection 1

¹² Cf legal aid act section 11 subsection 2 and section 16 subsection 2

4 Grants of legal aid

If legal aid is granted, the applicant is entitled to either legal assistance outside of court, or legal representation in court proceedings. The legal aid will be provided by a lawyer, who will be remunerated through state funding.

If legal assistance is granted, the applicant will normally receive legal aid according to set rates of how many hours needed for the case – for instance in most immigration cases, one will receive legal aid for between 3 and 7 hours, while in family cases regarding divorce one will receive legal aid for 12 hours. The rates for different matters are set by the Ministry of Justice, at an approximate level of the average they assess will be necessary for different legal matters.

The client will still be entitled to legal assistance from the legal aid lawyer, regardless of whether the case is more extensive than what the set rates take provision for.

If legal representation is granted, the applicant will receive as much legal aid as necessary to conduct the case in a reasonable manner. The courts or the County Governor's office will check the hours claimed, and will cap the amount of hours available if it exceeds what is reasonable.

If legal aid is granted, the court fees will also be covered under the legal aid scheme.

The client will be obliged to pay a contribution. The rate is 925 NOK (125.53 €) for legal aid outside court and 25 % of the cost, but capped at 4725 NOK (627.67 €), for legal aid in court proceedings.

5 Use of legal aid schemes

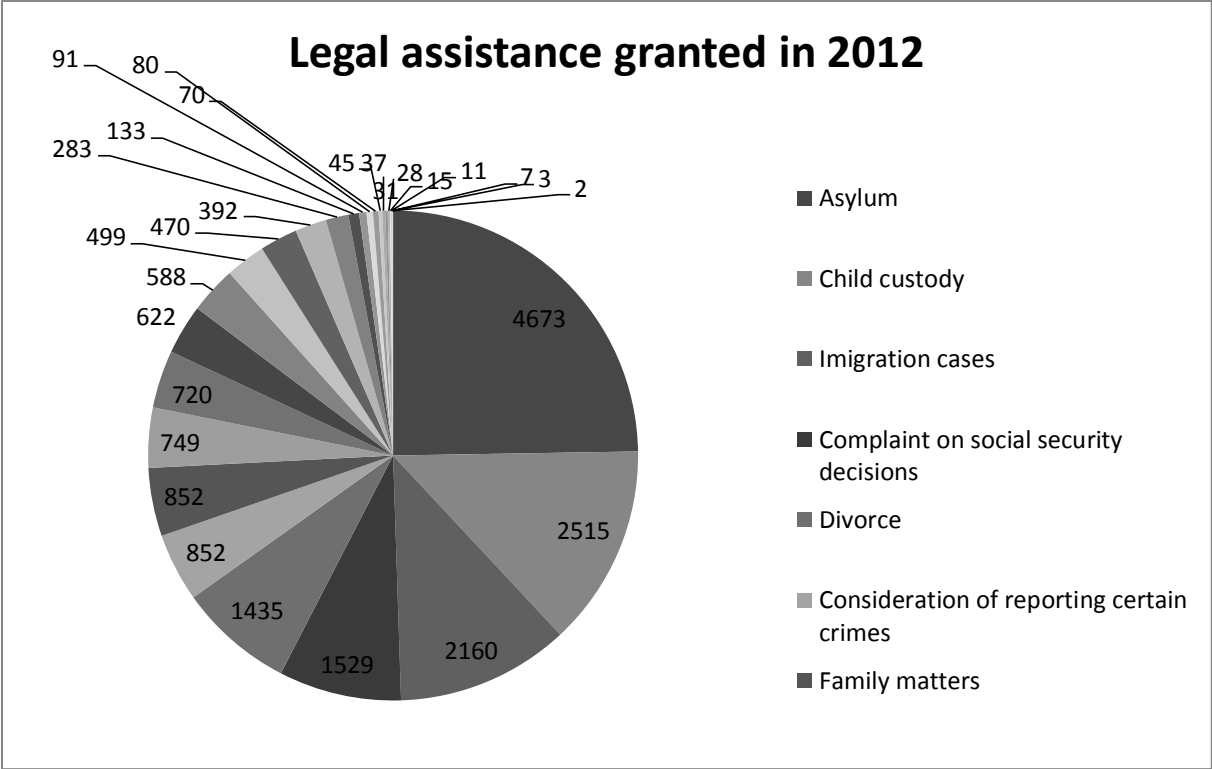
There are not very precise statistics for the use of the legal aid schemes available. However, I will point out certain figures of interest.

5.1 Use of the juricare scheme for legal outside court

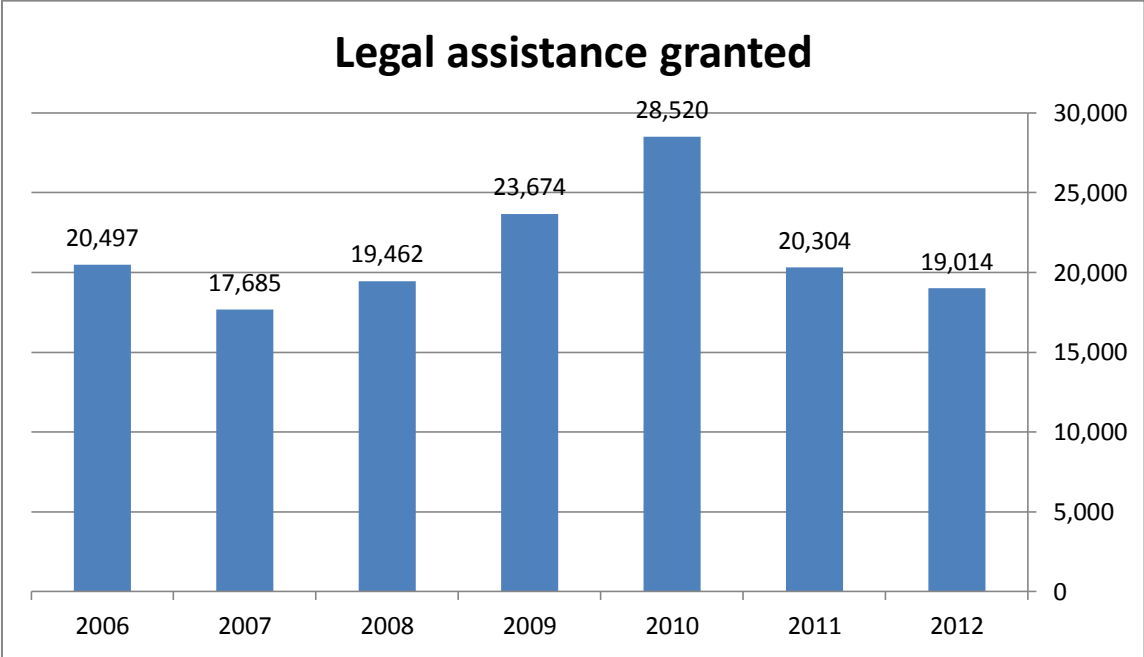
Under the publicly funded legal aid juricare scheme about 19 000 applications for legal assistance outside court were granted in 2012. This amounts to 38 cases per 10 000 inhabitant. The ten areas of law where there was granted most legal aid were:

Asylum	4673
Child custody	2515
Immigration cases	2160
Complaint on social security decisions	1529
Divorce	1435
Consideration of reporting certain crimes	852
Family matters	852
Employment	749
Other cases	720
Compensation for victims of violent crime	622

¹³ Cf Bentsen og Rønning *Bruken av unntaksbestemmelsene i lov om fri rettshjelp* Universitetet i Oslo, Bokserien 1/2008 Oslo 2008



If we look at changes in the number of cases legal assistance were granted, we do see an increase in 2009 and 2010. This is mostly due to a sharp increase in the number of applications for legal aid in asylum cases and other immigration cases, which corresponds with the rise in asylum applications in Norway at the time. Besides from this, the number of legal aid applications granted each year is remarkably stable.



5.2 Use of juricare scheme for legal aid in court proceedings

There exists no current statistics of use of legal aid for legal representation.

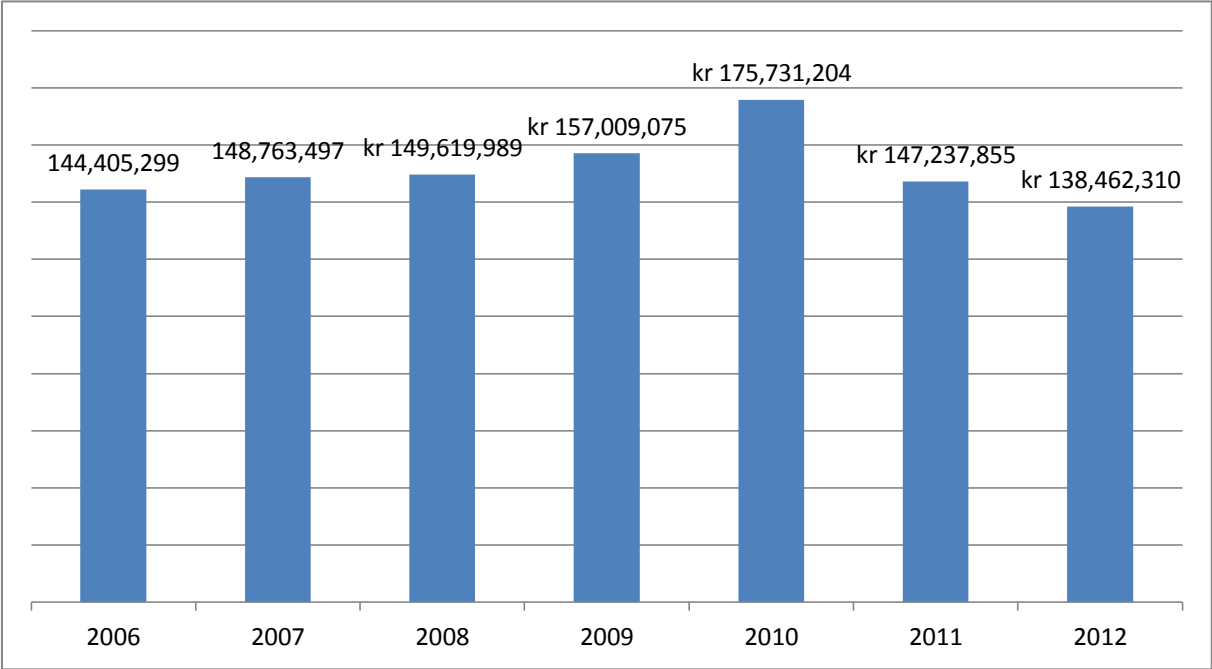
However, in preparation of the recent Government Policy paper on legal aid, an overview of the use of the scheme was made. In this, it is reported that in 2007, there were 5420 cases where legal representation was granted. This represents approximately 11,53 cases per 10 000 inhabitants. Over 50 % of this was child custody cases, 15 % were cases related to use of force in psychiatric treatment, and 10 % were divorce cases. Other matters constitute thus only a very small part of the total use of the scheme. For instance were tenancy cases only 0,4 % of the legal representation granted.¹⁴

6 Legal aid expenditure

Legal aid expenditure is demand led – in principle legal aid will be granted to all entitled to it under the Legal Aid Act, regardless of budgetary considerations. From an international comparative perspective, the Norwegian legal aid expenditure is high, being top three among the countries of Council of Europe with 45,5 € per inhabitant.¹⁵

6.1 Legal assistance in the juricare scheme

Legal assistance paid out, in nominal figures (NOK). We see an increase in legal aid expenditure in 2010, which mostly can be contributed to a sharp increase in legal aid applications for asylum cases, which corresponds with the fluctuations in the number of asylum seekers coming to Norway. The cost of legal assistance to asylum seekers was four times higher in 2010 than in 2006.



6.2 Legal representation in the juricare scheme

There exists no exact figure on the total expenditure on legal representation. However, the State Budget for 2012 and 2013 predicts how much will be spent on legal representation.

¹⁴ Stortingsmelding nr 26 (2008-2009) page 24

¹⁵ European judicial systems. CEPEJ studies No 18 (2010 data) tabell 2.4 page 45

The total amount of legal aid expenditure budgeted 2013 was 713 335 000 NOK,¹⁶ a nominal increase of 3,9 %.

Of this, 517 059 000 NOK is designated for legal representation. It represents an increase from 459 922 000 NOK for 2012. The increase of the legal representation expenditure corresponds with a decrease in the legal assistance expenditure.

6.3 Expenditure on alternative legal aid schemes

Of the total expenditure on legal aid from the legal aid budget of the Ministry of Justice,¹⁷ only a small portion is assigned to other legal aid schemes than the publicly funded juricare scheme. In the State budget for 2013, 31 293 000 NOK are assigned. This is 4 % of the total budgeted expenses for legal aid.

7 Alternative legal aid schemes

As mentioned, the main publicly funded legal aid scheme is the juricare system, providing legal assistance and legal representation by lawyers. In addition, there are many other legal aid initiatives, both fully and partly publicly funded. For a complete review of these, see Johnsen *Hva kan vi lære av finsk rettshjelp*.¹⁸ Here, I will highlight some of the more particular.

7.1 First line legal aid service

In the recent government policy report on legal aid, the government proposed to establish a first line legal aid service. Through this service, all inhabitants should be provided with one hour consultation with a legal aid lawyer, regardless of whether they otherwise would qualify for legal aid.

As a first step towards implementation, a pilot project was initiated in 2010. The purpose was to test who would use such a service and how such a service should be structured in order to be efficient. The municipals of two Norwegian counties, Buskerud and Rogaland, participated.

The pilot project was started 1. January 2011 and ran until it was discontinued 31. December 2012. If the first line legal aid service will be implemented nationwide is still not decided.

An evaluation report was finished in April 2013, on which this section is based.¹⁹

7.1.1 Use of the service

The total use of the first line legal aid service was 6,5 per 1000 inhabitants.²⁰ This was somewhat lower than expected. This is mainly explained due to lack of marketing and that the service was not in operation for a long period of time.

The results clearly showed that the service was in most use in the smallest municipalities, and in municipalities without any private practising lawyers.²¹

¹⁶ Statsbudsjettet side 29

¹⁷ Cf State budget chp 470

¹⁸ Johnsen *Hva kan vi lære av finsk rettshjelp? En sammenligning av rettshjelpsordningene i Norge og Finland*. Justis- og politidepartementet. Oslo 2009

¹⁹ Ellingsen et al *Evaluering av pilotprosjekt om førstelinjerettshjelp* Kristiansand 2013

²⁰ Ibid p 23.

7.1.2 Accessibility

The first line legal aid service aims to be accessible to the entire population, and is not targeted towards any particular groups. However, the service does aim to also encompass disadvantaged groups.

The data collected from the pilot project gives little basis for definite conclusions as to what groups the first line service reach. Some figures can give us some indications.

The users of the service are somewhat more likely to be of foreign origin.²²

Income data indicates that users of the service are mainly from middle income groups, with average salaries. Both high income and low income groups are underrepresented. However, there are indications that immigrant groups and people on social security benefits are overrepresented. 37 % of the people contacting the first line legal aid service have an income below the eligibility limit in the legal aid act.²³

Findings indicate that marketing of the service is a main factor deciding who the group will reach.

The types of cases the service handles are also an indicator on who use the service. In general, there are a lot of cases in areas of law typically associated with a middle class background, such as marriage/divorce, real estate and inheritance. These three fields of law are by far the most common in the scheme. Cases which are covered by the juricare legal aid scheme, like child welfare, are underrepresented. Some areas which might indicate that the service is being used by particular underprivileged groups, like debt and social security, are overrepresented.

31 % of respondents answer that they would have contacted a lawyer regarding the matter they contacted the first line service about.

Marketing of the service seems to be a key element in which groups utilise the service. However, the data collected from the pilot project is not sufficient to draw definite conclusions. In general, word of mouth, commercials in media and referrals from public offices were the most important sources of information about the service.²⁴

7.1.3 Services provided and outcome

In 86 % of the cases, the lawyer provided oral counselling to the client. In 9 % of the cases, the lawyer assisted the client in filling out a form, drafting a will or similar actions. In 4 %, the lawyer represented the client against the other party.²⁵

In 60 % of the cases, the legal problem was fully or partially solved. 30 % of the cases were reported to be unsolved after the consultation. Still, satisfaction with the service was high, and 97 % of users report that they felt that their questions have been answered.²⁶

²¹ Ibid p 24

²² Ibid p 28 and 31

²³ Ibid p 31 – 32 and 55

²⁴ Ibid p 37

²⁵ Ibid p 46

²⁶ Ibid p 27

Several different schemes of limitations on the help given were tried out. In general, the success rate increased as the time available for advice was increased from 30 minutes to 60 minutes. When the first line legal aid services is situated at a municipal social security office, success rates are somewhat higher than when the service is situated in a lawyer's office,²⁷ most probably due to the lawyers giving legal aid from social security offices had better possibilities to prepare before meeting the client.

In 37 % of the cases, the clients were referred to additional legal aid. Most common referral from the first line legal aid service is to the legal aid lawyer's own private practice.

7.1.4 Costs

In the pilot project, both first line legal aid service situated in the lawyers' office and in the municipality social security offices were tested. The average cost per client was 2490 NOK (331.83 €) for legal aid given through municipality social security offices compared to 911 NOK (121.02 €) for legal aid given by lawyers at their offices. Most of the extra cost is due to increased remuneration and expenses for the lawyer traveling to the municipal offices.

If a first line legal aid service is implemented in the entire Norway, total cost of between 100 000 000 NOK and 200 000 000 NOK (13 284 000 to 26 568 000 €) is to be expected.

The evaluation report concludes that the first line legal aid service mostly covers an unmet need for legal aid not normally covered under the legal aid act, and that nationwide implementation of the service not will reduce demand for legal aid under the legal aid act.

7.2 Public legal aid offices

There exist two public legal aid offices in Norway. One is situated in Finmark, the northernmost county in Norway, and is in particular oriented towards meeting the legal needs of the Sami population. The other one is situated in the inner city of Oslo, Norway's capital and largest city, and is particularly oriented towards meeting the legal needs of the inner city population, especially immigrant groups. The legal aid office of Oslo has been in operation since 1893.

Both legal aid offices operate in accordance with the legal aid act, only supplying legal aid if the client meets the eligibility criteria. However, both offices will also grant legal aid in certain cases not normally covered by the legal aid act, if the client is considered to be in great need of legal aid.

Both legal aid offices are funded partly by government and partly by municipality funding.

The legal aid office in Oslo is quite controversial. Currently, the office is considered for closing, as the municipality has cut the funding for the office.

7.3 Student run legal aid clinics

Currently, there are five student run legal aid clinics, situated in the four biggest cities in Norway. Each is affiliated to a university. The legal aid clinics are staffed mostly by senior law students, with some form of supervision from the law faculties.

The legal aid clinics all have policies on reaching out to groups not otherwise covered by the public legal aid scheme, through for instance outreach work or low-threshold legal aid offices. For certain

²⁷ Ibid p 41

groups, like prisoners and foreigners who have been expelled from the country, the student run legal aid clinics are the only place where legal aid is available.

In total, the student run legal aid clinics handle a great amount of cases, compared to the juricare scheme. Approximately, 15 000 cases are handled each year.²⁸ Compared to the public spending on such clinics, approximately 12 000 000 NOK yearly²⁹, the clinics provide very cost efficient legal aid.

8 Compliance with international human rights standards

Although the Norwegian legal aid scheme in some aspects is generous, there has still been critique from international human rights bodies against the system.

8.1 UN Human Rights Committee

In the 6th Periodic Cycle of review of Norway's compliance with its obligations under the UN Convention on Civil and Political Rights (CCPR), undertaken in October 2011, The UN Human Rights committee expressed concern about the current legal aid system was sufficient to meet the requirements in the CCPR art 14, and encouraged the Norwegian government to review its scheme in order to ensure full compliance.

"6. The Committee is concerned that means tested legal aid fails to take account of the actual circumstances of the applicants, and is assessed without regard to the actual cost of the legal service being sought. Moreover, legal aid is not available at all with regard to certain categories of case. (art. 14)

The State party should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so requires."³⁰

8.2 UN Committee Against Torture

In the review of the combined 6 and 7 periodic report from Norway to the UN Committee Against Torture, undertaken in November 2012, the Committee expressed concern on the limitations on legal aid available to persons facing expulsion or return.

"16. The Committee regrets that the legal safeguards prescribed by law are not always guaranteed to all asylum seekers and foreign nationals pending expulsion, such as the right to information concerning their rights in a language they understand and the right to free legal aid in the case of expulsion. The Committee notes with concern the publishing of a consultation paper by the State party on the possibility to restrict further the right to free legal aid (arts. 3, 11 and 16).

In order to fulfil its obligations under article 3 of the Convention, the State party should guarantee all necessary legal safeguards to ensure the rights of persons facing expulsion or return. The State party should also offer appropriate legal aid to foreigners in all expulsion cases if necessary to safeguard

²⁸ Johnsen 2009 page 78

²⁹ State budget chp 470 section 72

³⁰ CCPR/C/NOR/CO/6

their rights and establish procedures to ensure that foreign nationals are informed of their rights in a language they understand.”³¹

The legal aid scheme was also a part of the assessment of compliance with access to justice standards regarding Norway’s use solitary confinement.

8.3 European Court of Human Rights

The Norwegian legal aid scheme has been subject to scrutiny from the European Court of Human rights, in regards to ECHR art 35-issues on exhaustion of domestic remedies and legal aid.

In the case of AGALAR vs. Norway, app. No 55120/09 (dec.), the government argued that the complaint should be declared inadmissible due to non-exhaustion of domestic remedies. The applicant had applied for legal aid, but the application was denied. The applicant was then unable to avail himself of the possibility to appeal the decision of the Immigration Authorities.

The ECtHR held, in keeping with case law, that *“the right to an effective remedy in Article 13 “does not guarantee a right to legal counsel paid by the State when availing oneself of such a remedy” unless the grant of such aid is warranted by “special reasons” in order to enable effective use of the available remedy (see Goldstein v. Sweden (dec.) no. 46636/99)”* and stated that such cases should in principle be declared inadmissible. However, the Court did consider whether such “special circumstances” as could absolve the applicant for the requirement to exhaust domestic remedies was present in the current case.

In the consideration of there where such “special circumstances”, the Court attached particular importance to the fact that there had been a decision from the Court to apply Rule 39 of the Rules of the Court, and that the Court had communicated the case to the State. Furthermore, the Court emphasised that the financial eligibility criteria for legal aid was fulfilled, and the Civil Affairs Authority’s assessment of the legal aid application seemed superficial.

As a conclusion, the Court held that:

“In the Court’s view, the special circumstances described above are of such a nature as could arguably absolve the applicant from his normal obligation to exhaust the national judicial remedies.”³²

However, the issue was not decided upon, as the application to the Court was dismissed as manifestly ill-founded on other reasons.

Several similar cases from Norway on legal aid in immigration cases have been subject to ECtHR considerations, where the ECtHR applies similar tests.³³ However, in these cases the applicant had not applied the Norwegian Government for legal aid. Thus, the argument of deficiencies in the legal aid system as basis for non-exhaustion of domestic remedies did not find favour in the ECtHR in such circumstances.

³¹ CAT/C/NOR/CO6-/7

³² AGALAR vs Norway, app. No 55120/09 (dec.)

³³ ABDOLLAHPOUR vs Norway App. 57440/10 (dec.) and ALI vs Norway App. 22669/10 (dec.)

9 Legal aid reform

In 2009 a government policy paper was presented to the parliament, suggesting several reforms of the publicly funded legal aid scheme.³⁴

Among the suggestions was an expansion of the scope of the legal aid act, reviewing the financial eligibility criteria, implementing several measures to increase the quality of the legal aid provided under the scheme, and implementing the first line legal aid service as described in section 7.1.

The reform of the financial eligibility criteria is particularly interesting. The objective of the proposed reform was to ensure a greater correspondence between the financial ability of the applicant, the cost of the legal assistance needed, and the legal aid granted. It could be understood as a sort of "disposable means"-test, where there is made an assessment of how much the applicant has available to spend on legal aid.

The increased emphasis on quality is also an interesting feature. There was no radical reform suggestion put forward, but there were considered to implement a scheme of approval of legal aid lawyers. In order to get such an approval, legal aid lawyers might be required to show experience or particular skill within a certain field of law, or might be required to go through regular training courses of relevant law.

The follow-up of the policy paper has so far has been disappointing. A pilot project on the first line legal aid service has been conducted, but the project not been continued. The government has put all other reform suggestions on hold until the evaluation is complete. Thus, none of the proposed reforms have been implemented. The Parliamentary election in Norway, after which it is expected that the government will change, makes is uncertain whether the legal aid reform work will continue.

Norway has not been affected by the austerity times. The spending on legal aid is stable, and there is no indication that the Government does not wish to uphold current spending levels. The main hindrance of the legal aid reform seems to be the capacity of the Ministry of Justice. After the terror attacks of 22. July 2011, most of the MoJ's capacity has been directed towards terror and crime fighting. Other areas have been prioritized down. What direction the work of reforming the Norwegian legal aid system will take in the future, is uncertain.

³⁴ Stortingsmelding nr 26 (2008-2009)