

# German legal aid by the scruff of its neck - or just in a bad quarter of an hour?

- The development of German legal aid since the turn of the century -

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**Note:** *This report is an update to the comprehensive report about legal aid and access to justice submitted to the ILAG 2001 conference in Melbourne. For details of the German legal aid system, e.g. its development, the application of a means and merits test, other forms of funding legal service etc., please refer to this report which is still available for download on [www.ilagnet.org](http://www.ilagnet.org). As the previous report, this update will concentrate on civil legal aid.*

## I. Legal Framework

### 1. Overview: Basic Rules - Zivilprozessordnung and Beratungshilfegesetz

The relevant body of law for legal aid in civil matters, the Code of Civil Procedure (*Zivilprozessordnung*) and the Law On Legal Aid For Advice and Representation (*Beratungshilfegesetz*) has not changed since 2001 when the comprehensive report on the German legal aid system was presented. The two laws regulate the requirements (means and, if applicable, merits) and procedure for a legal aid grant in civil matters.

*Note: Hereinafter all citations to the German Code of Civil Procedure (Zivilprozessordnung) will be cited to ZPO, to the Legal Advice Act (Beratungshilfegesetz) will be cited to BerHG; in each case followed by the relevant section (in German: §)*

The first book, second chapter of the ZPO, §§ 114 – 127a, contains the rules governing legal aid for court proceedings (“*Prozesskostenhilfe*”). These provisions apply directly only to court proceedings before the civil branch of the courts of general jurisdiction (the so-called “*ordentlichen Gerichte*”, the “*Amtsgerichte*” (“district courts”), the “*Landgerichte*” (“high courts”), the “*Oberlandesgerichte*” (“courts of appeal”) and the “*Bundesgerichtshof*” (“supreme court”). These courts have sectoral jurisdiction over such matters as contract law, tort law, property law, insolvency law, family law, inheritance law etc.

The second pillar of the German legal aid system is legal aid for advice and representation, the so-called *Beratungshilfe*. The legal framework for *Beratungshilfe* is laid down in the BerHG. BerHG § 3 states that advice and representation is provided by the legal profession, although advice in simple matters can also be given by the county courts (*Amtsgerichte*). BerHG § 1 includes a means test, which refers for details to the provisions for legal aid for court proceedings in the ZPO (BerHG § 1 II). *Beratungshilfe* pays for advice and, if necessary, for out of court representation, in civil law (excluding labour law), administrative law and constitutional law matters. For penal law matters, funding is restricted to advice (BerHG § 2 II). The ratio of legal aid for advice and legal aid for representation changed since the introduction of *Beratungshilfe* in 1981. In the 1990s – the last data available –, the advice:representation ratio has been approx. 1:3.

### 2. Means

As explained in detail in the 2001 report, the assessment of means follows a rather complicated pattern. After assets and income of the applicant have been defined, a number of deductions have to be made from the real income to assess the “economically available income” which is relevant for legal aid purposes. In addition to case-by-case deductions, e.g. taxes, social security contributions, reasonable insurance premiums, work-related spendings, trade union membership fees, (reasonable) costs for lodging, instalments for credits, maintenance payments, lump sums for the applicant, his/her wife/husband and for each child can be deducted as the „general costs of living“. These lump sums are calculated as a percentage of the support citizens qualifying for social welfare benefits under the *Bundessozialhilfegesetz* (Social Welfare Act – SGB XII) receive.

A major shake-up of the system of social welfare in Germany that has come into effect on January 1, 2005 (unemployment support and social welfare have been combined into one system of social security) accidentally enlarged the number of citizens covered by legal aid because of the assessment of available income by application of the rules laid down in the Social Welfare Act. The direct application of the new rules for social welfare to the means test for legal aid thus would have resulted in a significant increase in public spending for legal aid on more or less technical grounds. Calculations showed that, depending on the federal state in question, the income threshold below which legal aid is available would have increased between 16,5 to 21,4 per cent, depending on the federal state in question. This problem had been overlooked in the somewhat hastily drafted reform laws that only focused on social security aspects. The problem was rectified by a law that has come into effect on April 1, 2005. The new law has changed the relevant section of the ZPO, § 115. The lump sums now contained in the reformed Social Welfare Act are still applicable to assess the available income for legal aid purposes in general, but only with additional modifications laid down annually in a by-law of the Federal Department For Justice (the so-called “*Prozesskostenhilfebekanntmachung*”). The deductions in

this by-law have been calculated in a way that the availability of legal aid has been brought back to the pre-2005 levels.

### 3. Merits

To qualify for legal aid for court proceedings (“Prozesskostenhilfe”), the applicant needs to pass a merits test by showing that the litigation she wishes to undertake has a reasonable chance of success and is not frivolous or reckless. For that purpose, the applicant has to establish the plausibility of the case by submitting the necessary facts to the court that will eventually hear her case.

While the provision containing this requirement (ZPO § 117) has not changed in the past years, recent decisions of the German constitutional court (the *Bundesverfassungsgericht*) have given binding directions to all courts how strict the merits can be without violating constitutional rights of applicant. The *Bundesverfassungsgericht* held that if the assessment of the reasonable chances of success depends on a “difficult” question of law that has not been decided by the Supreme Court yet, the application must not be declined (*Bundesverfassungsgericht* February 28, 2005, 1 BvR 596/03).

### 4. Cost Rules

#### a) The 2004 reform of cost rules

While the general rules for legal aid have remained unaltered, a reform of the cost rules has had a major impact on lawyers doing legal aid work and on access to justice in general. On July 1, 2004, reformed cost rules for court fees and for party/party costs came into force in Germany after a decade-long discussion about the need for a reform (these cost rules cover, in a rather complex system, all courts systems and all types of work provided by lawyers). Fees for lawyers doing legal aid work are paid (in most cases with a discount) according to these scales of fees. In the absence of an individual fee agreement, these fees also apply to lawyer/party costs. Consequently, the reform has resulted in a modest increase of income for lawyers doing legal aid work and for lawyers who fall back on those fees for lawyer/party costs. For civil work the fees are ad valorem-based and differ depending on the kind of work provided. Hence it is impossible to give an exact number to what extent fees for legal aid work have increased. Depending on who is doing the maths (the government, lawyers or insurers), the overall increase is said to be between 14 and 29 per

cent (as lawyers are quite keen to point out, the increase has been the first since 1994 and it has not off-set the increase in the overall costs of living in the same period). In some areas of law, for example criminal law and employment law, the increase under certain circumstances can be as high as 40 per cent.

#### b) Impact

This overall increase in fees has an impact on different levels of the system of access to justice which will be felt over the coming years:

**aa) Legal Aid:** Legal aid budgets – funded on state level and mostly separately for each of the five court systems that are run by the 16 federal states – will need to be increased considerably over the coming years because of the increased court and lawyers’ fees that need to be paid in cases brought under a legal aid grant. As legal aid in Germany is strictly demand-driven, the federal states are forced to provide more funds for the legal aid budgets as there is no option to cut back eligibility unless the federal laws governing legal aid will be changed. Currently, there is, to the best of knowledge of the reporter, no discussion about the need for cut-backs on government level. In general, there seems to be little awareness or preparation on the state level for the massive increase on costs that will be felt for the first time at the end of the fiscal year 2005. With the costs for legal aid directly linked to the general court fees and lawyer fees and with those fees increasing by two digit numbers, the additional burden for the public purse will be substantial. Funding of legal aid, traditionally taken for granted in Germany, may well become a policy issue for the first time in the foreseeable future.

**bb) Legal Expenses Insurance:** An additional pressure will be felt for the legal aid budgets as the recent reform of the cost rules also has a direct impact on the business of Germany’s legal expenses insurers. If an applicant for a legal aid grant holds a legal expenses insurance policy that covers the legal dispute in question, legal aid has to be declined as the policy is regarded as an asset that has to be used before legal aid can be granted. Because of the high proportion of German households covered by legal expenses insurance – in the mid-1990s as many as 50 per cent – the insurance industry traditionally has alleviated pressure on the public purse felt in other countries where access to justice relies to a much greater extent on legal aid. Consequently, legal aid in Germany

mainly covers areas where legal expenses insurance is not available, i.e. family law and criminal law. The coverage of the population by legal expenses insurance thus has a direct impact on the need to provide funds for the legal aid budgets. Insurers pay 1.6 billion EUR in lawyer's fees per annum, approx. 20 per cent of the fee income of German lawyers (lawyers thus generate much more income from the legal expenses insurance industry than from legal aid work, see below).

For legal expenses insurers, the recent cost reform has brought dramatic changes to their business model as overnight their costs have increased – according to their calculation – by 21 per cent. For insurers, it is therefore necessary to counter this additional expenditure with a number of measures: They have begun to terminate contracts with those clients who have made a certain number of claims over a defined period of time (under German insurance law, it is possible to terminate a contract when a certain number of claims has been made although insurers traditionally have been reluctant to invoke this right), thus ironing out potential risks in their insurance pool. Insurers also try to contract with lawyers directly and negotiate more favourable contractual fees than the cost rules – on which the insurance contracts have traditionally been based – allow. However, it will be inevitable for insurers to raise premiums to offset the increase in costs. One insurance company has calculated that the annual premium of a standard policy for consumers might become as expensive as 300,- EUR before excess. Before that background, insurers expect that the coverage of the population will further decrease. Over the past ten years, coverage has already decreased from 49 per cent to 43 per cent as the worsening economic situation and the privatisation of certain aspects of social security (elements of the state pension scheme and health insurance) has forced many Germans to prioritise when it comes to allocating funds to their insurance portfolio. It must be expected that an increase in premiums will speed up this process, resulting in more people relying on legal aid in areas of law where legal services have traditionally been funded by the insurance industry.

## **5. Service Providers**

The provision of legal services has been monopolized since 1935, with lawyers being the only group exempted from the general requirement of a licence to practice law because of their admission to the bar. Although the law

in question, the *Rechtsberatungsgesetz*, provides for the licensing of other service providers than lawyers if there is market demand, no such licences have been issued in the past decades because of the ever growing number of lawyers. Following a general election in September 2002, the re-elected labour government announced that it intended to cut back the de-facto monopoly rights of lawyers to enable the provision of legal services by non-lawyers. The reform has not been – at least officially – linked to any form of a hidden government agenda to bring competition to the “legal aid market”. The deregulation of the legal services market will be restricted to out-of-court legal services which are funded by legal aid only to a very limited extent. However, the reform will allow other service providers to offer legal advice in areas where unmet needs are likely to be found today (no empirical research has been carried out into this issue): One of the main elements of the reform will be the legalization of legal advice given by altruistic service providers (e.g. for asylum seekers, OAPs etc.) which currently offer advice to people unwilling or unable to instruct a lawyer under the threat of illegality. A separate paper will address this reform project to assess its likely impact on legal aid.

## **II. Expenditure**

### **1. Overview**

The following charts outline the development of the expenditure on legal aid since the last data was presented in 2003. As has been explained before, there is no national legal aid budget in Germany. All 16 federal states fund legal aid through the budgets of the departments in charge for their court systems. There are five court systems (courts of general jurisdiction and four specialized court systems: tax, administrative, social security and employment) in all 16 federal states, each with a legal aid budget, plus a legal aid scheme in all federal states for non-forensic legal advice. This feature of the German legal system results in approx. 100 legal aid budgets of different size, all of which make up the national expenditure on legal aid. For reasons explained below, the data provided in this report focuses on the legal aid budgets of the courts of general jurisdiction in civil matters and of the legal aid scheme for legal advice.

## **2. Legal Aid For Court Proceedings (Civil)**

Compared to the spending in the courts of general jurisdiction - which deal with all civil and criminal law matters -, the expenditure for legal aid in the four specialized court systems is insignificant. The ratio over the past 15 years has been between 94:6 and 92:8, although most recently there seems to be a shift because of a growing number of disputes in employment law and social security law mat-

ters (one federal state reported a ratio of 85:15 for 2004). The budget of the courts of general jurisdiction falls into two categories, civil and criminal matters. As it does not make a difference from a budgetary point of view, not all federal states break down the expenditure into legal aid for civil and criminal matters. In the following chart, only the number for civil matters is given if it has been specified by the state in question. If no detailed analysis exists, the budget *including* expenditure for criminal matters is given

**Table 1: Expenditure for civil legal aid for court proceedings – courts of general jurisdiction („Prozeßkostenhilfe“) 1992 – 2004 in T-EUR**

| (pop. 1 000)              | 1992      | 1993      | 1994      | 1995      | 1996      | 1997      | 1998      | 1999      | 2000      | 2001      | 2002      | 2003       | 2004       | 2005 (plan) |
|---------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|-------------|
| B-W<br>10<br>3 388        | 19<br>889 | 21<br>832 | 23<br>673 | 26<br>792 | 31<br>342 | 33<br>183 | 33<br>950 | 33<br>490 | 32<br>130 | 34<br>426 | 34<br>426 | 34<br>949  | 43<br>513  | 45<br>300   |
| BAY<br>12                 | 21<br>902 | 25<br>509 | 25<br>683 | 28<br>520 | 33<br>039 | 36<br>751 | 37<br>787 | 37<br>218 | 38<br>065 | 39<br>456 | 43<br>034 | 46<br>669  | 50<br>765  | 52<br>000   |
| BER<br>3 388              |           |           |           |           |           |           |           | 10<br>972 | 11<br>196 | 10<br>048 | 10<br>508 | 12<br>268  | 12<br>753  | 12<br>800   |
| BRA <sup>#</sup><br>2 575 |           |           |           |           |           |           |           |           | 9<br>114  | 9<br>127  | 9<br>708  | 9 778      | 9 656      | 10<br>650   |
| BRE<br>663                | 2<br>344  | 2<br>436  | 2<br>299  | 2<br>839  | 2<br>967  | 3<br>318  | 3<br>490  | 3<br>342  | 3<br>054  | 3<br>094  | 2<br>846  | 3 323      | 3 622      | 3 184       |
| HAM<br>1 743              | n.a.      | n.a.      | n.a.      | 8<br>677  | 7<br>409  | 8<br>648  | 8<br>678  | 8<br>138  | 8<br>079  | 7<br>864  | 8<br>316  | 10<br>336  | 10<br>569  | n.a.        |
| HES*<br>6 089             | 17<br>752 | 18<br>784 | 19<br>512 | 22<br>392 | 24<br>899 | 26<br>843 | 28<br>632 | 29<br>246 | 27<br>814 | 28<br>597 | 30<br>447 | 33<br>330  | 38<br>106  | 40<br>000   |
| M-V<br>1 732              | 1<br>544  | 2<br>352  | 2<br>945  | 3<br>876  | 5<br>055  | 5<br>513  | 6<br>697  | 6<br>300  | 7<br>060  | 7<br>010  | 7<br>241  | 7 745      | 8 598      | 7 320       |
| NDS*<br>7 993             | 24<br>641 | 25<br>317 | 26<br>824 | 30<br>359 | 33<br>862 | 36<br>926 | 38<br>224 | 37<br>977 | 39<br>969 | 42<br>171 | 45<br>453 | 48<br>914  | 52<br>521  | 52<br>500   |
| NRW<br>18                 |           | 59<br>361 |           | 69<br>842 |           | 84<br>056 |           | 84<br>056 | 85<br>938 | 87<br>462 | 90<br>829 | 112<br>200 | 119<br>600 | 125<br>900  |
| R-P<br>1 059              | 10<br>742 | 11<br>274 | 11<br>959 | 13<br>369 | 13<br>140 | 14<br>930 | 14<br>827 | 15<br>192 | 16<br>259 | 17<br>323 | 19<br>621 | n.a.       | 23<br>169  | 23<br>029   |
| SAAR<br>1 061             | 4<br>015  | 3<br>998  | 4<br>519  | 4<br>554  | 4<br>988  | 5<br>525  | 5<br>470  | 5847      | 5<br>741  | 4<br>683  | 6<br>238  | 6 971      | 6 202      | 7 700       |
| SACH<br>S                 | 2<br>438  | 4<br>917  | 6<br>786  | 7<br>789  | 9<br>910  | 11<br>859 | 14<br>482 | 14<br>888 | 15<br>213 | 13<br>666 | 14<br>167 |            |            |             |
| S-H<br>2 823              | n.a.      | 10<br>075 | 10<br>113 | 11<br>117 | 12<br>095 | 12<br>619 | 13<br>524 | 13<br>896 | 14<br>283 | 14<br>620 | 15<br>852 | 17<br>075  | 18<br>024  | 19<br>050   |
| S-A*<br>2 523             |           |           |           |           |           |           |           |           |           |           |           | 14<br>796  | 15<br>195  | 16<br>800   |
| THÜ**<br>2 373            | n.a.      | n.a.      | n.a.      | 5<br>675  | 6<br>160  | 6<br>160  | 8<br>437  | 9<br>203  | 12<br>331 | 12<br>049 | 12<br>584 | 15<br>647  | 13<br>614  | 14<br>255   |

\* data for Niedersachsen, Sachsen-Anhalt and Hessen includes criminal legal aid as these states do not break down the expenditure for legal aid into different categories. Experience from other states that do differentiate shows that between 11-22% of the expenditure for legal aid is spent on criminal legal aid and 78-89% on civil legal aid.

\*\* data for Thuringia until 2003 includes criminal legal aid and legal aid for advice and representation. Expenditure broken down to all three types of legal aid was made available for the first time in 2004. According to the 2004 numbers, the breakdown of the overall budget is 84% for civil legal aid, 11,3 for criminal legal aid and 4,7% for advice and representation.

# data for Brandenburg until 2003 includes legal aid for advice and representation. In 2004, when the numbers were broken down for the first time, legal aid for advice and representation had a share of 10,2 per cent of the overall budget.

The development of the expenditure for legal aid has shown some rather extreme ups and downs in the past 25 years. The expenditure grew from 93,19 million EUR in 1981 to 188,94 million EUR in 1986 (+103%). As a result of cost-cutting measures implemented in 1986, it then remained on that level for the next five years (1986-1991), eventually decreasing to 177,16 million EUR in 1991 (-6%). Between 1992 and 1996, the expenditure in most of the federal states for which data is available increased sharply by 50 up to 70 %. In 1995, another reform of the legal aid rules led to a new approach of calculating income and deductions that came into full effect from 1996 onwards. As a result, in the federal states forming the pre-1990 FRG there has only been a moderate increase in expenditure in the 1997 - 2002 time-bracket (5 – 20 %) with some states (e.g. Bremen and Hamburg ) even reporting a decrease in expenditure. Since 2002, legal aid budgets have increased dramatically again, with increases of 20 – 30 per cent in most states over a two-year period (2002-2004) growing faster than within the five year period before this time-bracket (1997-2002). This growth has been solely demand-driven as the rules governing legal aid remained unchanged until mid-2004 (see above).

As there is no consolidated data available for all 16 states, the overall expenditure for civil legal aid in the year 2004 can only be an educated guess, taking the available empirical data as a starting point of a calculation. The most likely figure - before contributions - is approx. 425 million EUR (comparative figure for 2000: 303 million EUR). As only 12 of the 16 federal states have reported their exact civil legal aid budgets, this estimate contains a number of assumptions:

- three of the 16 states have a combined civil/criminal legal aid budgets (see above: NDS, HES and S-A). It has been assumed that 17 per cent of the budget goes into criminal legal aid. Telling from experience in some of the states that break down their numbers, the percentage could be, however, as low as 11 per cent and as high as 22 per cent. A median of 17 per cent has been chosen as the deduction from the overall budgets of these three states that is needed to arrive at the most likely figure for civil legal aid (the

data in the above chart is before the deduction, where applicable).

- one state (SACHS) has not reported data. Its last known expenditure has been increased according to increases in comparable states in the same time-bracket.

This sum of 425 million EUR is not the net expenditure. It does not include monies paid by assisted parties as contributions (in approx. 80 per cent of all grants, no contribution is required). As contributions paid do not go back into the legal aid budget, but into the budget for the court system (like general court fees), it is not known what percentage of expenditure is re-paid through contributions. Most states asked believe that between 15 and 20% of the expenditure is re-paid. Assuming that this estimate is correct, this would result in a net expenditure of 345 - 358 million EUR (comparative data for 2000: 258 – 275 EUR).

### **3. Legal Aid For Advice And Representation**

The budgets for legal aid for advice and representation (*Beratungshilfe*) continue to grow much faster than those for legal aid for court proceedings. However, they still remain a rather small portion of the total expenditure for legal aid. In a combined budget for civil legal aid and legal aid for advice and representation, the latter statistically amounts to approx. 10 per of the budget for civil legal aid.

The numbers given include *Beratungshilfe* for all areas of law where it is available, not only for civil matters. There are no specific *Beratungshilfe*-schemes for each of the different court systems, resulting in a single budget for *Beratungshilfe* in all 16 member states.

An analysis is complicated by the fact that out of the 16 federal states, Bremen and Hamburg, Germany's smallest and third smallest states, have opted for operating a system of Citizen Advice Bureaux instead of providing funds for payment of lawyers in private practice for giving advice. Therefore, their expenditure is not directly comparable to the other states (and included only for the sake of completeness in the case of Bremen, Hamburg did not provide data). Additionally, not all states have a defined budget for *Beratungshilfe* but simply fund it through their general budget for the court system.

**Table 2: Expenditure for Legal Aid For Advice And Representation („Beratungshilfe“) 1981 – 2004 in EUR**

|               | 1981 | 1985  | 1990  | 1995  | 1996  | 1997  | 1998  | 1999               | 2000  | 2001  | 2002  | 2003  | 2004  |
|---------------|------|-------|-------|-------|-------|-------|-------|--------------------|-------|-------|-------|-------|-------|
| B-W<br>10693  |      | 675   | 1 021 | 1 583 | 1 935 | 2 350 | 2 501 | 2 740              | 2 671 | 2 705 | 2 953 | 3 994 | 5 330 |
| BAY<br>12 423 | 135  | 534   | 943   | 1 537 | 1 848 | 2 153 | 2 406 | 2 495              | 2 526 | 2 701 | 2 918 | 3 782 | 4 839 |
| BER<br>3 388  | 32   | 256   | 601   | 545   | 540   | 673   | 791   | 1 111              | 1 107 | 1 307 | 1 493 | 1 846 | 2 000 |
| BRA<br>2 575  | ./.  | ./.   | n.a.  | n.a.  | n.a.  | n.a.  | n. a. | 418 <sup>1</sup>   | n.a.  | n.a.  | n.a.  | n.a.  | 1 099 |
| BRE*<br>663   | n.a. | n.a.  | n.a.  | n.a.  | 294   | 296   | 297   | 382                | 396   | 384   | 433   | 448   | 410   |
| HES<br>6 089  | 89   | 602   | 1 098 | 1 081 | 1 313 | n.a.  | n.a.  | 1 714 <sup>2</sup> |       |       |       |       |       |
| M-V<br>1 732  | ./.  | ./.   | n.a.  | 219   | 237   | 325   | 405   | 422                | 494   | 569   | 608   | 904   | 1 090 |
| NDS<br>7 993  | 114  | 1 223 | 2 066 | 2 294 | 2 716 | 3 177 | 3 604 | 3 793              | 3 999 | 4 294 | 4 429 | 5 124 | 5 787 |
| NRW<br>18 080 | 304  | 2 071 | 3 284 | 3 859 | n.a.  | 4 244 | n.a.  | 4 857              | n.a.  | n.a.  | n.a.  | 7 000 | 8 500 |
| RLP<br>4 059  | 53   | 366   | 517   | 647   | 776   | 773   | 869   | 996                | n.a.  | 951   | 1 022 | 1 172 | 1 587 |
| SAAR<br>1 061 | 26   | 213   | 309   | 317   | 462   | 552   | 525   | 573                | 498   | 487   | 534   | 583   | 644   |
| SACH<br>4 321 | ./.  | ./.   | n.a.  | 624   | 740   | 919   | 1 143 | 1 386              | 1 608 | 1 800 | 1 775 | 2 056 |       |
| S-AH<br>2 523 | ./.  | ./.   | n.a.  | 306   | 527   | 661   | 869   | 1 052              | 1 166 | 1 263 | 1 415 | 1 728 | 2 008 |
| S-H<br>2 832  | 49   | 525   | 852   | 1 030 | 1 195 | 1 266 | 1 486 | 1 389              | 1 374 | 1 584 | 1 632 | 1 770 | 2 109 |
| THÜ<br>2 373  | ./.  | ./.   | n.a.  | n.a.  | n.a.  | n.a.  | n.a.  | 553                | 579   | 566   | 591   | 735   | 763   |

- 1 Brandenburg did not have a statistic for expenditure on legal aid for advice and representation until 2004. The expenditure for 1999 is a best guess, derived from the fact that the average consultation cost was approx. 49 EUR in 1999 in the five ex GDR federal states. Brandenburg issued 8.605 certificates in 1999 and, assuming the average cost was 49 EUR, this results in a gross expenditure of 418.000 EUR.
- 2 Hessen has not provided data on expenditure since 1997. The number given for 1999 is a best guess, derived from the fact that the average consultation cost in that year was approx. 61 EUR in 1999 on a nationwide basis. Hessen issued 27 944 certificates in 1999 and with an assumed average cost of 61 EUR, this results in a gross expenditure of 1.714.000 EUR.

As again there is no consolidated data available for all 16 states, the overall expenditure for legal aid for advice and representation in the year 2004 can only be another educated guess. The most likely figure is approx. 42 million EUR, confirming the assumption that the overall legal aid budget for legal advice and representation is approx 1/10 of the overall civil legal aid budget. As only 12 of federal states have reported their exact legal aid budgets for advice and representation, this

estimate yet again contains a number of assumptions:

- two small federal states (BRE and HAM) have been excluded from the calculation as they run CAB instead of a legal aid scheme.
- two federal states (HES and SACHS) have not provided any up-to-date data. Taking their last known budget as a starting point and mirroring the

increase in comparable state on that sum, an amount of 2 800 T-EUR (HES) and 2 400 T-EUR (SACHS) was assumed as their most likely budget in 2004.

It follows from the above numbers that the net expenditure for legal advice and representation has grown over the years from 6,45 million EUR in 1985 to 10.7 million EUR in 1990. Even though the five ex GDR states joined the FRG in 1990, resulting in an increase of the total population of 25%, the expenditure for *Beratungshilfe* fell between 1990 and 1994 to 10.5 million DEM. Since then the expenditure has “gone through the ceiling”, growing within five years from 10,5 million EUR in 1994 to 23,55 million EUR in 1999 (+125 per cent.) and to 42 million EUR in 2004. This is an increase of more than 90 per cent over the past five years and over a 10 year period (1995 – 2004) an increase of more than 320 per cent.

#### **4. Summary**

This report covers the expenditure for the two largest legal aid budgets, civil legal aid and legal aid for advice and representation. It can be assumed that in addition to those budgets (345 – 358 million EUR and 42 million EUR) the overall expenditure for criminal legal aid in 2004 was between 80 and 100 million EUR, while legal aid for proceedings before courts for administrative, tax, employment and social security law will have added another 30 to 40 million EUR to the bill (for the basis of these assumption, see the comprehensive 2001 ILAG report on legal aid in Germany).

Therefore, the overall legal aid expenditure in Germany in 2004 can be estimated at approx. 514 million EUR. Broken down on the number of lawyers (132.000), this means a statistical income of 3.894 EUR from legal aid for every single lawyer. Broken down on the number of citizens (82,532 million), the per capita spending on legal aid was 6,23 EUR, compared to 4,30 EUR in 1999.

#### **5. Outlook**

The sharp increase in the expenditure on legal aid in the past few years has neither been driven by a change of the legal aid rules nor by an increase in lawyers' fees. The only explanation for the increase is a growing demand for legal aid as more people qualify for legal aid in times of mass unemployment and a decreasing coverage of the population by legal expenses insurance. With the recent increase of court fees and lawyers' fees coming into full effect in 2005, an even more dramatic increase must be expected for the fiscal year 2005. Within a 12 month period, expenditure is likely to increase by another 15 to 20 percent.