

ILAG 2001

P

a

p

e

r

s

International Legal Aid Group

Jon T. Johnsen
Legal Aid in Norway

Melbourne
Australia
13-16 July

LEGAL AID IN NORWAY

Professor Jon T. Johnsen, University of Oslo

Preliminary paper to the ILAG Conference: *The Challenge of the New Century*
Melbourne June 13-16 2001

THE SCHEMES

Overview

We might describe Norway as a "mixed delivery" system, although judicare is the dominant mode of delivery. We might distinguish between the general civil scheme, the criminal scheme and a few specialized schemes.

Parliament enacted the present civil scheme in 1980.¹ Changes have been made but the main structure remains. Regulations issued by the Ministry of Justice supplement the statute, and structure important elements. The Norwegian civil scheme formally distinguishes between legal advice outside the courts and litigation aid.²

In this short presentation I focus on the general civil scheme,³ which is mainly judicare. However, two salaried offices also operate under the scheme, one in Oslo, the largest city in the country with eight jurists and one in Finnmark with two jurists, covering three small Sami (Lappish) municipalities in one of the most remote parts of the country. The Inner Finnmark office excludes litigation aid.⁴

A separate judicare scheme covers aid in criminal matters. We also find a separate salaried scheme for consumer aid that differ markedly from the general judicare scheme, and a separate scheme for a center specializing on ethnic discrimination has also been set up recently. Five student clinics at Norway's four universities deliver a significant amount of Norwegian legal aid.⁵

In 1993 local bar associations established pro bono offices that offer free short time advice (half an hour consultations) to the public without any means or merits test. Practicing lawyers participated voluntarily according to a rotational scheme. They use the localities of the local bar associations with evening opening hours. In 1998 the local bar associations operated more than 30 schemes.⁶

The Ministry of Justice functions as the general manager of the judicare schemes, with an overall responsibility for overseeing the schemes and preparing new

¹ Legal Aid Act (NLAA) June 13 1980 no 35 (Lov om fri rettshjelp)

² However, advice might also cover complex written negotiations or proceedings before administrative organs or tribunals. Litigation aid covers all proceedings before the ordinary courts, and before some other tribunals or specialized courts.

³ For a more thorough analysis and criticism of Norwegian legal aid., see Johnsen, Jon T. (1999) "Progressive legal services in Norway?" *International journal of the legal profession* Vol 6 No 3 1999 pp 261-310 (Johnsen, 1999)

⁴ For a more detailed account, see *Johnsen, 1999:291-93*

⁵ For a more detailed account of the Norwegian consumer council and the student clinics, see *Johnsen, 1999:285-87, 288-90.*

⁶ Source: Advokatbladet no 1 1998:8.

statutes, issuing regulations, budgets etc. Parliament consents to the main policy principles, statutory reforms and budgets. The same holds true for the salaried offices. The power to create new offices rests with the Ministry of Justice and the Parliament. The judicare schemes are national, and leave little freedom for local variations

Applications are mainly handled by the administrations of the twenty county governors. Some applications might also be decided by a private lawyer or a salaried office who accept to render the aid, the courts or the public authority in question.

Merits test

Originally the Norwegian scheme covered all types of problems. The merits test for advice was lenient. The applicant had to document a "well founded interest" in receiving legal aid. Litigation aid had stiffer conditions. The case should have a significant importance to the applicant or raise issues of principle. However, the merits tests became considerably tightened during the eighties and nineties by excluding important issues from the scheme. To day, it distinguishes between three categories of problems:

The first category consists of cases that are especially important to the citizen and might justify public legal aid without any merits or means test except belonging to the prescribed category. At present, this liberal category mainly comprehends

- expulsion of foreign citizens (immigrants),
- public child custody
- involuntary psychiatric ward
- compensation claims from victims of rape, sexually abuse and serious violence.
- conscious objectors to military service

The applicant has an unconditional entitlement to legal service in such cases.

The second category restricts to matters concerning

- divorce
- compensation for personal injuries and loss of supporter
- eviction of tenants
- job dismissals
- public insurance claims

In this category, legal aid is granted with a lenient merits test. The applicant must show that aid is necessary.

The third category consists of all other sorts of problems. As the main rule legal aid is not granted. The legal aid authorities might issue discretionary grants only when vital welfare values are at stake for the applicant.

For litigation grants, the applicant also must show a high probability for success.⁷

Means test and contributions

The legal aid statute leaves the Ministry of Justice with wide discretion to make up the means test according to financial considerations, although the parliament must consent to the budgetary consequences. To day, there are two limits, one for yearly gross

⁷NLAA §§ 13, 17, 18.

income, and one for net property. The gross income limit amounts to AUS \$ 36.200 for single persons,⁸ AUS \$ 38.300 for couples without children, and AUS \$ 40.400 for couples that support children. The limits apply to the income of the household, which means that couples' incomes are added. The net property limit amounts to AUS \$ 21.300.⁹ However, in conflicts among household members - typically divorces - incomes and property are judged individually.¹⁰

However, the means test does not apply to cases in the first category in the merits test – deportation of immigrants, public child custody, about involuntary medical and psychiatric treatment, compensation to victims of sexually abuse and violence and conscious objectors.¹¹ In these cases, the applicant is entitled to legal aid regardless of income or property. However, the means test apply both for applications with a lenient merits test and for applications that must fulfil the “vital welfare importance” - criterion.

The income and property limits are balanced by a contribution system. There are two kinds of contributions: set contributions and percentage contributions. Set contributions are fixed sums. Costs that fall within the scope of the set contribution, must be wholly covered by the applicant himself. The public only pays for costs that exceed the actual set contribution. Percentage contributions mean that the applicant must pay a share of the total costs.

Grantees in the first category – who receive aid without any means or merits test – are also exempted from contributions.¹² All grantees in the second and third category must pay the set contribution. Percentage contributions must be paid by single persons with gross incomes over AUS \$ 14.900, for couples over AUS \$ 17.000 and for couples with children over AUS \$ 19.100.¹³ At present, the set contribution amounts to AUS \$ 64 and the percentage contribution to twenty-five percent of the additional costs without any limit.¹⁴ Should costs of AUS \$ 20.000 occur, the contribution would consume more than half a year's disposable income of a low wage family above the contribution limit.

⁸All sums in this paper are converted to Australian dollars. I apply the exchange rates from May 11, 2001: AUS \$1 = NKR 4,70. The currency rates might vary significantly. This should be kept in mind when comparing.

⁹FOR-1996-10-22-1001 (Regulation 1001) §1-1

¹⁰NLAA § 8

¹¹NLAA §§ 13, 19, 22

¹²Regulation 1001 §2-1

¹³Regulation 1001 §2-3

¹⁴FOR 1996-10-22-1002

Service delivery and entitlement to legal aid

In judicare the clients are free to choose the lawyer they prefer, usually with some geographic limitation.¹⁵ Jurist without a lawyers license might also render legal advice.¹⁶ If a salaried bureau exists, clients are free to choose between the bureau and the private lawyers in the district.

The idea behind the schemes is to deliver aid similar to the services that lawyers offer to paying clients. When eligible, there is no exemptions for special types of legal services. A grant includes negotiations, arbitration, representation to administrative tribunals, ombudsmen or consumer claimant boards etc, when deemed appropriate for solving the problem. However, the schemes exclude problems when legal services are provided otherwise, for example by other public agencies, insurance, through trade unions or other organizations.

Both schemes cover all types of costs deemed necessary for proper aid – for example travel costs or expert advice or testimony, and court dues. However, according to Norwegian procedural law, a party might be ordered to pay the opposing party's costs if he loses totally or gains less than earlier offered from a counterpart attempting at an amicable settlement. The litigation scheme will only cover such costs in exceptional instances.

The ideology behind the judicare schemes clearly presupposes a public duty to provide aid to all who qualify. However, legally one ought to distinguish between the entitlement to *public subsidy*, and the entitlement *to service*.

As a rule, everybody who qualifies under the judicare schemes is entitled to public subsidy. An application cannot be denied on the ground of lacking public funds. This entitlement might be enforced through the courts if necessary.

The two salaried bureaux are obliged to accept legal aid commissions from applicants within their geographic area, which means an entitlement to service. Capacity problems will usually be solved by queuing.

Private lawyers are free to deny judicare commissions without reason. Except for the first category of cases, the schemes do not provide remedies if clients with legal aid grants are unable to find a lawyer willing to handle the case.

Payment

The Norwegian judicare schemes are wholly state funded. Traditionally, remuneration for judicare work has been per hour and varied between a half and two third of the average charged from paying clients. In 1992, the Ministry of Justice introduced a test scheme for per case fees. In 1994 it issued regulations that - with a few adjustments - made this scheme permanent. To day per case fees apply to most judicare cases.

¹⁵ If the client pays the extra costs, he might be allowed to pick a lawyer outside the geographic limits.

¹⁶ From 1993 jurists without a license are allowed to deliver legal advice over the judicare schemes in Norway. FOR-1997-10-09-1087

The payment principle is simple. The regulation lays down a base sum that equals the hourly fee for legal aid. The per case-fee are then set to fixed numbers of the hourly fee. These multiplication factors refer to the average hours spent on the type of case in question. For non-standardized cases a per hour fee still applies. At present, the per hour fee amounts to AUS \$ 136.

The main considerations behind the change seemed to be cost control. The Ministry realized that controlling the time used on judicare commissions, is difficult. The average numbers of hours paid for in the different types of cases tended to increase over time, due to more inventive billing from the lawyers.

The two salaried offices are funded through grants according to a budget like other public offices. Lawyers in legal aid bureaux are salaried on a level lower than what they might earn in private practice.

STATISTICS

Eligibility and use

The complexity of the means test makes it difficult to make precise estimates of how great a share of the population are eligible under the schemes. The share also might fluctuate over time, due to changes in the economy and the means test. An estimate made from the income statistics for 1997, suggested that between one sixth and one fourth of the households in Norway qualified under the means test that year. (*St. meld. 25:59-61*)¹⁷

They issued 27.000 grants under the schemes in 1998 (*St. meld. 25:32-33*), which means 6.4 grants per 1.000 inhabitant. A rough estimate per 1.000 *eligible* shows a coverage of approximately 30 grants.

The actual average gross income for applicants subject to the means test, amounted to AUS \$ 16.847 in 1998 or less than half the upper limit. (*St. meld. 25:60*) Although pretty wide in scope, the actual coverage concentrates on the poorest part of the population

Figure 1 shows the case distribution of the two schemes:¹⁸

¹⁷Stortingsmelding nr 25 (1999-2000) *Om fri rettshjelp* (Governmental Policy Report to Parliament no 25 (1999-2000) *Free legal services*) (*St.meld. 25*)

¹⁸Source: *St. meld. 25:36*, table 7.1.