

# **Might Norway learn from Finnish legal aid? A comparison of legal aid in Norway and Finland**

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Summary Report<sup>1</sup>

*"DELIVERING EFFECTIVE LEGAL AID SERVICES  
ACROSS DIVERSE COMMUNITIES"*

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<sup>1</sup> Summary from Jon T. Johnsen 2008 "Hva kan vi lære av finsk rettshjelp? En sammenlikning av rettshjelpordningene i Norge og Finland." The report will be printed as an appendix to a policy report (stortingsmelding) from the Norwegian Government to the Norwegian Parliament on reforms in Norwegian legal aid. The policy report was still under preparation by the Norwegian Ministry of Justice when this paper was finished. References will be added when the policy report is published – probably in the beginning of April. My report was delivered to the ministry on October 14 2008 and does not cover later changes.

## **1 INTRODUCTION**

My paper summarizes a report that I have written for the Norwegian Ministry of Justice. The report is a contribution from the project "*Reform models for legal aid*" lead by the author, which is a joint enterprise between the Institute for Public Law at the Law Faculty of Oslo University and the Norwegian Ministry of Justice.

The project is part of the Ministry's work with a policy report on reforms in Norway's legal aid schemes. The report compares legal aid in Norway and Finland and traces similarities and differences between the two countries. A better understanding of how the two systems work is the main goal, but the mapping of models that might be of value to Norwegian reforms has also been important. The comparison has been carried out independently and according to the research methodology the author thought proper. Conclusions and recommendations have been made without any instructions from the Ministry. The Ministry's Policy Report is expected to be formally approved by the government in the beginning of April 2009 and handled by the Norwegian Parliament during the spring session.

Another ambition with the project is to contribute to the academic understanding and methodology for doing comparative research on legal aid schemes. The present report, however, is meant for the reform process and focuses on similarities and differences between the schemes in the two countries and less on methodology. Still, the structure of the analysis might to some extent elucidate issues in comparative method and I will briefly outline its main characteristics.

Why was Finland chosen for the comparison? A policy reason was an instruction from the Norwegian Parliament to the Ministry of Justice that the Finnish legal aid schemes should receive more attention as reform models.

From an academic point of view, we might emphasize the common background. Both countries are part of the Nordic legal culture that for long has been characterized by an extensive collaboration and exchange of ideas on legal institutions and systems. A comprehensive community in legal ideology exists; comparable to what is found between some common law countries. The close connections between the Nordic countries are important to reforms in the legal field. Legal aid polices that works well in Finland might have a higher chance of success in Norway than models taken from more different systems. On the other hand, Finland is more different from Norway than the other Nordic countries when it comes to legal service and legal aid. Such contrasts might produce more incentives

for reforms than comparing jurisdictions that have almost identical systems.

The report uses a broad approach to the comparison. It starts with an overview of research on the unmet legal service need in the two countries. Then it turns to the main features of the legal aid schemes in operation work and analyses the major principles underlying existing legal aid policy. A thorough comparison is made of the coverage of the schemes compared to the estimated service need. The report discusses the schemes' coverage concerning

- the problem criteria – or the categories or types of problems covered;
- the person and poverty criteria used and the contribution systems
- the types of service offered

Special emphasis is put on the legal framework by mapping to what extent the schemes provide legal entitlements for the population covered or whether the service is subject to administrative discretion and budgetary restraints.

Administrative issue as the processing of applications, payment – especially to private providers – and the responsibility for organizing and overseeing the schemes also are compared. The report presents empirical data on how the schemes function in practice by comparing costs, coverage and the delivery systems and ends with evaluations of the findings combined with recommendations for reforms in the Norwegian schemes.

The report approaches legal aid as part of the overall provision of non commercial legal services in society. A major distinction is made between the general public schemes enacted in the legal aid statutes<sup>2</sup> and the criminal procedure codes<sup>3</sup> of the two countries contrary to the flora of more specialized schemes that exist independent of the general legal aid legislation. Schemes established in the legal aid statutes and codes of criminal procedure are labeled *LAA (Legal Aid Act) schemes* and other non commercial schemes *non LAA schemes*

Previously the importance of the non LAA schemes in the Nordic countries have been poorly researched and understood and the report attempts at getting a better idea of this "third" sector in non-commercial

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<sup>2</sup> Norway: Lov 13. juni 1980 nr 35 om fri rettshjelp (Rettshjelpsloven). Finland: Rättshjälpslag 5.4.2002/257 and Lag om statliga rättshjälpsbyråer 5.4.2002/258.

<sup>3</sup> Norway: Lov 22. mai 1981 nr 25 om rettergangsmåten i straffesaker (Straffeprosessloven). Finland: Lag om rättegång i brottmål 11.7.1997/689 (Brottmålslagen).

legal service provision. The main impression is that the sector is large in both countries and that its major features are common.<sup>4</sup> It consists of numerous enterprises with diverse purposes, organizing and service delivery.

The comparative report builds on two national research projects. The Norwegian research was conducted by Statskonsult.<sup>5</sup> The Finish study was carried out by the National Research Institute of Legal Policy (OPTULA).<sup>6</sup> Additional materials have been used when substantiated. In 2003 professor Francis Regan and I did a comprehensive study of Finnish legal aid, which is used in the comparison.<sup>7</sup> Both the Norwegian and the Finnish Ministry of Justice (FIMOJ) have supported the project and, upon request, they have provided the research project with all data and materials that they possess.

## **2 ESSENTIAL UNDERSTANDING**

The report sums up some main research findings on legal problems and legal service thought essential to the understanding necessary for developing a comprehensive legal aid policy. The report addresses issues as: What processes create legal problems? How are they handled today? What sorts of problems are not adequately solved?

### **2.1 Legal problems**

Legal service models and legal aid reforms must be evaluated from their possible impact on the legal problems that people cannot solve properly themselves. The report therefore points to major factors that impact on the creation and dispersal of legal problems. Norway has several studies of unmet legal service needs among the poorer part of the population

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<sup>4</sup> The other "sectors" might then be the private or "commercial" sector consisting of the private providers that sell their service at the market, and the public or "salaried" sector that consists of salaried providers who deliver non commercial service organized by local or central government. These distinctions are, however, blurred. In judicare schemes the providers come from the private sector and handle their commissions on a commercial basis. Several of the providers in the "third" sector as delimited in the report, also are salaried public employees. A technical distinction is therefore used that lumps all schemes that are not organized according to certain specified acts into the third sector.

<sup>5</sup> Published in "Kartlegging av rådgivnings- og konfliktløsningstilbudet i Norge ("Mapping the Norwegian advice and conflict solution system") DIFI-report 2008:1.

<sup>6</sup> Published in Henriikka Rostii & Johanna Niemi & Marjukka Lasola 2008 *Legal Aid and Services in Finland* National Research Institute of Legal Policy Report 237.

<sup>7</sup> Regan, Francis & Johnsen, Jon T. 2007 "Are Finland's Recent Legal Services Policy Reforms Swimming against the tide of International Reforms?" 26 *Civil Justice Quarterly* p 341-157 and Johnsen, Jon T. & Regan, Francis 2008 "How to use an international 'best policy'-model in the analysis and improvement of Finnish legal aid" in C.H. van Rhee and A. Uzelac (eds) *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ* Intersentia Antwerp-Oxford-Portland p 151-188.

carried out from the seventies on.<sup>8</sup> They show that at all times a huge amount of troublesome but unsolved legal problems exists among ordinary and poor people. Such research is scarce in Finland.<sup>9</sup> The report still assumes that a huge unmet service need exists in both countries and that the main Norwegian findings also are applicable in Finland. Legal service policy ought to focus on them.

People handle innumerable legal problems on their own. Problems also are outdated as legal problems because they are handled by other means or just lumped. The legal services delivery system is the other second major vehicle for handling legal problems. Reforms of legal aid should still focus on the service delivery systems but with increased awareness of the interplay with peoples' own problem solving capacity.

## **2.2 Legal service<sup>10</sup>**

The report then describes essential features of the legal service delivery systems in the two countries. It distinguishes between commercial and non commercial legal services. Also when the focus is the delivery of non commercial legal services the close connections and interplay with commercial provision should be kept in mind.

Like in most societies, the market is the main instrument for providing legal services to the population in both countries. In Norway licensed advocates have an extensive monopoly both on commercial legal service and also other legal service of some significance, while Finland views legal services as a free trade and has few restrictions on the providers.

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<sup>8</sup> Eskeland, Ståle and Finne, Just 1973 *Retttshjelp* Pax Oslo. Johnsen, Jon T. 1987 *Retten til juridisk bistand*, TANO, Oslo. Lied, Børre 1981 "Fangers retttshjelpsbehov" *Stensilserie for Juss-Buss* Institutt for retttssosiologi nr 15, Oslo. Haugen, Merethe and Vigerust, Elisabet 1992 Det udekkede behovet for retttshjelp – et uløst problem *Stensilserie for Juss-Buss* Institutt for retttssosiologi nr 59, Oslo. Johannesen, Roy Arne 2002 "Retttshjelp i landlige strøk" Stor særavhandling (Universitetet i Tromsø. Det juridiske fakultet) nr 114, Tromsø. Graver, Ane Broch; Skaug, Vegard; Strålberg, Rannveig and Tangen, Bente 2002 "Retttshjelp 2001" *Juss-Buss stensilserie* nr 85 Oslo.

<sup>9</sup> National Research Institute of Legal Policy asked about their respondents' perceived legal problems in surveys from 1991, 1994 and 1999. Litmala, Marjukka (ed) 2000 *Oikesusoslot 2000*. Katsaus oikeududelsten instituutioden toimintaan ja oikeusongelmiin and English summaries in: Litmala, Marjukka 2001 "The assessment of members of the public regarding legal problems and legal conditions." *Collection of Papers of Sino-Finnish Seminar on Access to Justice*. Ministry of Judicial Assistance and Foreign Affairs Ministry of Justice PRC, Research Department Ministry of Justice PRC and International Department Ministry of Justice Finland, p 74-92 and Litmala, Marjukka 2000 "Citizens' Assessment of their legal problems and legal institutions. Legal Problems Facing Citizens and Their Experience of Lawyers' Services" *Summary Research Communications no. 48*. National Research Institute of Legal Policy. Helsinki p 45-48.

<sup>10</sup> Figures from: Norway: "Tilsynsrådet for advokatvirksomhet" (unpublished). Finland: Rostii et al 2008 p 8, 10, 22-23 with references to Litmala 2000, 2004 p 146.

Norway with a population of 4.6 mill had close to 6 000 lawyers in private practice. Finland had almost to 2 000 lawyers for 5.2 mill people or only one third of the number in Norway.

On the other hand, Finland had 6-700 firms staffed with jurists with a master in law or jurists exam but without a lawyer's license. No statistics on the number of jurists working in those firms exist. Most of them supposed to work alone. Norway now allows commercial legal service except in court cases from jurists without a lawyer's license and had approximately one hundred in 2008.

Jurists who work in banks, funeral companies, estate offices and insurance also offer commercial legal service in Finland. In addition comes an unknown number of paralegals without a jurist's exam, but it is estimated that a few hundred of them run a business of some commercial significance. Paralegals are now excluded from court representation but are free to offer all other sorts of legal service. In Norway these categories conflict the lawyers' monopoly and are not allowed to practice at all.

Finland and Norway both use a mix of salaried and judicare in the delivery of legal service according to the LAA schemes although the mix differs significantly. Norway relies almost solely on judicare while Finland has an extensive network of public legal aid offices and uses them as the major provider of legal aid. In 2008 Finland had 60 public legal aid offices with 220 employed jurists distributed across the country, while Norway only had two offices, one in Oslo and a small one in the main Sami area in Northern Norway, with less than ten full time posts altogether. The public legal aid offices in Finland are solely responsible for delivering legal aid outside the courts while private practitioners also can be used for litigation aid. In Norway the two public legal aid offices are restricted to legal service outside the courts, while lawyers in private practice are the main providers of legal aid both in court cases and in other matters.

The mapping of the third sector turned out to be difficult and is incomplete in both countries. The research approach used also differed. In Finland the focus was on a selection of especially significant schemes, while in Norway the ambition was a virtually complete mapping. It proved difficult, however, to locate all the different organizations and institutions that offered noncommercial legal services and the data they could provide on their service also differed extensively in completeness and reliability. Still the minimum figures and estimates that can be drawn from the research show that the importance of the third sector has been significantly underestimated in previous legal aid policy.

The mapping comprehended around thirty different schemes in each country.<sup>11</sup> Some were small and provisional with a limited service offer; others were established institutions that handled significant caseloads.

Such non commercial schemes operated both in the public and in the private sector. The analysis divides them into:

- public enterprises – distinguishing between ombudsmen and other public providers;
- membership organizations – providers that are organizations within trade and labor or other interest organizations
- volunteer organizations – organizations especially for deprived or vulnerable groups and include both interest organizations, NGOs, grassroots organizations and charity.

The criterion for counting a non commercial legal service enterprise as a legal aid scheme is that the enterprise provides at least some services itself. Pure financial arrangements, like legal expense insurance (LEI) and unions that only pay their members bills for using private lawyers, are discussed separately.

Among the public enterprises both countries have several ombudsmen that handle complaints from the public against public administration and hospitals and over discrimination, consumer issues and data protection. We also find important schemes for legal service from public administration, in consumer matters, student clinics, counseling of crime victims and debt refurbishing. Norway also had a test scheme on municipality advice offices.

The membership organizations had service offers for farmers, homeowners, tenants, car owners, taxpayers, consumers etc, and the unions had extensive services in employment matters.

A wide range of voluntarily schemes also existed. The advocate organizations offered short, free advice according to Rota schemes at several locations in both countries, and the organizations for the poor and deprived had a broad specter of schemes. The different organizations for the handicapped had schemes and so did organizations for immigrants, refugees, prostitutes, raped and battered women, victims of incest, gay and lesbians, debt victims and consumers.

Both countries also have extensive LEI-coverage. Many membership organizations had arrangements for covering legal costs for their members when using lawyers in private practice; mainly in matters that fall within the working area of the organization.

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<sup>11</sup> Statskonsult 2008 p 6-72, Rostii et al. 2008 p 15-42, 109-123 and unpublished information.

The “third” sector appeared extensive, but rather opaque, in both countries. Despite incomplete mapping, Norway seems to have more actors in this sector than Finland, both in the public and the private part.

### **3 LEGAL AID IDEOLOGIES**

The chapter describes and compares the main legal aid ideology behind the LAA schemes in the two countries as it appears from the public documents establishing them. Finland has a constitutional provision that grants its citizens access to the courts or other independent judicial organ “with matters that concern their legal rights and duties.” Public access and insight into the case handling, the right to argue the case, the right to a reasoned decision and to appeal and other guarantees for a fair trial and a fair public administration should be secured by law (Finnish constitution 21 §).<sup>12</sup> Norway lacks similar provisions on the constitutional level.

Both The European Convention on Human Rights article 6 and the UN Convention on Civil and Political Rights article 14 grant everyone a fair trial within reasonable time. Access to legal aid is part of the fairness concept when the individual lacks resources to pay for necessary representation. Both Finland and Norway have subscribed to these treaties and the conventions are made part of domestic law in Norway with rank over national legislation.

Both countries emphasize equality before the law as essential principles for legal aid policy. No one shall suffer from legal losses due to lack of personal or financial resources. Still the Finnish provisions that state the objectives of the legal schemes more definitely express the government’s obligation to establish sufficient delivery systems than in Norway.

The Finnish motivation<sup>13</sup> for its present legal aid act points to increased legal complexity and that access to competent legal counseling is regarded as an important guarantee for access to justice and fair trials. Equality before the law is threatened by increasing legal costs and a fair and efficient judicial system cannot compel people to suffer unreasonable economic risks for protecting and enforcing their legal rights. In the end it is a governmental responsibility to see to that the constitutional principle on equal access to the courts becomes a reality also when it comes to legal counseling.

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<sup>12</sup> Finlands grundlag 11.6.1999/731

<sup>13</sup> Regeringens proposition till Riksdagen med förslag till rättshjälpslag och vissa lagar som har samband med den (RP 82/2001 rd) p 5.

Norway also emphasizes equality before the law and the importance of legal service.<sup>14</sup> Everyone ought to have access to necessary help for an affordable price. Norway has, however, significantly more exceptions from this main principle than Finland. While the Finnish legal aid act regards necessary legal aid as a citizen's right, its Norwegian counterpart defines access to legal aid as a welfare benefit restricted to legal problems of great personal and welfare importance to the applicant. In Finland, the entitlement to legal service comprehends all forms professional service deemed necessary to solve the problem – including a duty to see to that the provider system is sufficient. Norway's focus is to a greater extent limited to access to the courts and the government's obligation to provide legal service is mainly limited to the funding necessary to hire a lawyer in private practice.

The differences between Finland and Norway in their main approach to legal aid policy are marked. The report's next issue is to what extent these differences influence the practical framing of the schemes.

## **4 PROBLEM CRITERIA**

### **4.1 The LAA schemes**

*Civil schemes.* Finland uses general, discretionary criteria for identifying the problems that qualify for civil legal aid under the general schemes. The wording in the Finnish Legal Aid Act (FLAA) appears simple.<sup>15</sup> The main rule is that all legal problems qualify when legal aid is necessary, unless certain specified exceptions apply (FLAA 1 §).

Norway uses an opposite technique and specifies in considerable detail the types of problems that qualify. The Norwegian Legal Aid Act (NLAA) makes a major distinction between litigation aid and aid for other legal problems.<sup>16</sup> The list contains eleven major categories for legal assistance outside the courts and fifteen for legal representation before the courts and some other judicial bodies (NLAA §§ 11, 12, 17). The provisions leave limited space for discretion and appear far more complex than the Finnish provisions. Other categories of problems are excluded from legal aid unless the circumstances appear extraordinary.

The main provision for civil legal aid in Finland covers most legal problems that the target groups experience. Few problems are left outside if they are serious. The Norwegian LAA scheme only comprehends selected parts of the service needs.

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<sup>14</sup> Ot prp 35 (1979-80) p 36-38 and St meld 25 (1999-2000) Om fri rettshjelp p 19-21.

<sup>15</sup> FLAA

<sup>16</sup> NLAA

*Defender schemes.*<sup>17</sup> In Norway a defender is obligatory and entitles the accused to legal aid whenever a criminal charge is decided in ordinary hearings. If simplified procedures apply due to confession of guilt, and the main issue is the sentencing, the maximum statutory penalty must be more than six months in prison for qualifying.

In Finland an accused only qualifies for a defender if the *minimum* statutory penalty of the charge is four months or more. If the accused has confessed on the guilt issue, the court shall consider if he can defend himself also when the maximum penalty exceeds four months.<sup>18</sup>

*Victim's schemes.*<sup>19</sup> Both countries provide the victim with a lawyer in criminal cases when the charge comprehends serious violent or sexual crime. Civil claims – mostly compensation – that arise from any criminal act might be forwarded by the prosecutor as a part of the criminal proceedings on request of the victim without any costs. Such claims might also be forwarded by the victim's lawyer if assigned. The defender will also represent the accused with respect to the civil claim. The claim might also become subject to litigation according to the rules for civil legal aid.

#### **4.2 Non LAA schemes**

The data on the legal criteria for receiving legal services from the non LAA schemes is incomplete both in Finland and Norway. Still it seems safe to say that they vary a lot. Ombudsmen in both countries generally have well defined tasks that also delimit the types of complaints they are supposed to handle, while the criteria in other parts of the third sector are less formalized. Still they usually limited their service to problems that fall within the scope of the general goal and purpose of the organization. Established membership organizations tend to have more formalized rules than the organizations focusing primarily on deprived groups, making legal advice a distinct part of the membership entitlements.

Since the Finnish legal aid legislation cover all sorts of problems, it overlaps with the third sector. Within the overlaps, the public legal schemes might therefore be used either as a supplement or as a primary provider, according to the client's choice. The Norwegian legal aid act states that the schemes contained are subsidiary to other providers and might only be used if alternatives are lacking. Neither does the Norwegian third sector cover all of the categories of problems that fall outside the scope of its LAA schemes.

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<sup>17</sup> Norway: Straffeprosessloven. Finland: Brottmålslagen.

<sup>18</sup> FLAA supplements the defender scheme to some extent, see below Section 5.

<sup>19</sup> Norway: Straffeprosessloven. Finland: Brottmålslagen.

### **4.3 Conclusions**

The LAA schemes cover a significant broader scope of civil legal problems in Finland than in Norway. The Norwegian criteria focus on the high frequency problems without much evaluation of the individual meaning of the problem. The legal service needs, however, consist of problems both with high and low frequency in the population. Also a low frequency problem might cause serious harm to the persons concerned. A major research finding is that a great variety of low frequency problems exist and that the many different categories taken together also might compare to the high frequency problems when it comes to added welfare importance. The discretionary Finnish criteria provide markedly better possibilities for capturing all the different categories of serious legal service problems that exist in the target groups.

The Norwegian civil priorities show an urban bias. They focus on dissolution of marriage and cohabitation, compensation for personal injuries, loss of provider and crime injuries, job dismissals, rental termination and complaints over social security denials. Family dissolution, living in a rented dwelling and working as an employee are far more common in urban than in rural areas, while legal problems connected to farming, fishing, forestry and homeownership mainly falls outside the scheme. Several important minority problems also are outside the scheme's priorities.

Since FLAA overlaps with the third sector, the criteria of the two sectors together cover almost all serious service need. In Norway the criteria on the NLAA are less extensive. Although the third sector covers a varied selection of problems, it has not been synchronized with the NLAA schemes. It means that there are both gaps – categories of problems that are not covered by any non commercial scheme – and overlaps.

Both FLAA and NLAA contain discretionary exceptions from coverage when the applicant can use other non commercial schemes. The exceptions are significantly more extensive in Norway than in Finland. Such exceptions do not eliminate the overlaps since the third sector schemes are free to deny legal aid to applicants that are covered by the LAA schemes. Some of them also are established to document that the LAA coverage is insufficient.

When it comes to criminal legal aid, the Norwegian defender scheme appears far more liberal than the Finnish one, judged from the seriousness of the crime charged.

## 5 POVERTY CRITERIA

Since the main vehicle for providing legal services to the population is the market in both countries, a major idea behind the LAA schemes therefore is to support those who lack the buying power necessary for using the market efficiently. Both countries therefore use complex economic criteria, or means tests, for identifying the target population.<sup>20</sup>

Means testing is not merely a question about what the limits ought to be, it is also a question about what economic values, income and property, that ought to be taken into consideration when it is decided whether applicants qualify.

Neither is means testing merely a question of the capacity to carry *all* costs or not. Depending on the degree of poverty, people might be able to pay for simple advice themselves but not for lengthy trials.

*Means.* Significant differences exist in the delimitation of the means relevant for the tests. Finland builds upon the monthly *disposable* income. The income concept comprehends all sorts of income and with a listing of necessary expenses that are deducted. The Finnish property concept applies to all sorts of economic values, with a distinction between easily realizable property like bank accounts, and property that is hard to realize – for example real property – at least without a significant loss. A moderate home and a car necessary for work are kept aside. Debt is deducted. Property is added to the monthly income with different criteria for easily and not easily saleable values. Norway applies the economic limits on gross taxable income and net taxable property.

Both countries use *economic identification*. When the applicant live in a household with other members – typically married and cohabitating couples – the means tests apply on the household members' total incomes and properties, not only on the assets of the applicant. Finland restricts economic identification to married and cohabitating couples and their children. Other household members are assessed as singles. Norway uses economic identification on all members of multi person households.

The Finnish means concept seems best suited to map poverty according to the underlying idea of actual capacity to pay. Norway's concept is rougher and more oriented towards formal equality. It does not consider the losses and problems that might occur if the applicant has to realize the values in question. Neither does it consider whether the applicant actually has enough means available for the service in question.

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<sup>20</sup> Finland: Förordning 23.5.2002/388 om rättshjälp. Norway: Forskrift av 12. desember 2005 nr 1443 til lov om fri rettskjelp (rettshjelpsforskriften).

Since the Finnish concept is more complex, it is also more demanding to apply. Computerization seems important to efficiency.

*Limits.* Also the economic limits are complex. Both countries use separate economic limits for free legal aid and for legal aid with contributions. They also have different limits for applicants who live as singles and for applicants living in multi person households. Since property is added to income in Finland, they only use income limits, while Norway also has separate limits for income and for property.

In 2008, the maximum limit for qualifying for legal aid in Finland was a disposable monthly income of 1 500 euro for singles and 2 600 euro for married and cohabitating applicants subject to economic identification. Children were counted for by a deduction of 300 euro per child per month. The income limit for legal aid without a contribution was approximately half of the maximum.

Norway had a maximum yearly income limit in 2008 of 29 000 euro for singles and 43 000 euro for members of multi person households independent of size. No adjustments were made for children. The property limit was similar for singles and multi person households. It amounted to 12 500 euro. Legal aid without contribution also had a limit of 12 500 euro that comprehended all categories of households.

Nominally, the Norwegian limits are the most liberal ones. It is, however, difficult to compare the limits in the two systems, both because they relate to different ways of calculating people's assets and because Finland uses average monthly income for the last three months while Norway considers the yearly income in the last available taxation assessment. Other factors as variations in currency rates and differences living costs, wage levels and legal cost levels also complicate the comparison. Estimates still indicate that the Finnish limits are significantly more liberal for households with two or more persons, while they are approximately equal for singles. The limits for free legal services also seem somewhat higher in Finland than in Norway. On the other hand, the Finnish contributions are significantly larger than in Norway, especially for legal aid outside courts.

*Exceptions.* Finland uses the means test almost without exceptions. In criminal cases, the outcome determines whether the accused will have to carry the defender cost. If convicted, the court might order him to pay. If he qualifies for legal aid, his costs will be covered by scheme either fully or with the contribution.

Norway excepts a range of cases from means testing and grants legal aid independent of the economy of the applicant. The exceptions

relate to cases about serious interventions into people's integrity from government as:

- criminal charges which carry a prison sentence;
- involuntary expulsion from the country;
- public child custody;
- involuntary health treatment – for example for drug abuse, mental illness, and infectious diseases;
- conscious objectors to military service
- loss of legal competence.

Also several types of cases that connect to serious intrusions from other citizens are excepted. They are:

- compensation to crime victims;
- sexual crimes;
- female circumcision;
- forced marriage;

Neither do contributions apply in such matters.

The justification for these exceptions is not poverty and inability to carry the costs. For governmental interventions, the idea is that although justified, no one who suffers loss of freedom or other essential integrity intrusion ought to pay for the legal costs inflicted. Similarly, when someone is victim of criminal acts that cause serious bodily or mental harm or suffering, no one ought to pay the costs for using legal means for redress and rehabilitation.

*Costs to the counterpart.* In both countries the main rule for litigation is that the losing party must cover the costs of the counterpart. Both countries also except costs to the counterpart from coverage by legal aid. It means that the cost of losing in litigation usually must be carried fully by a legal aid grantee. Finnish research shows that this cost risk deters poor and middle income people from litigation, independent of the merits of their case.<sup>21</sup>

*Non LAA schemes.* The non LAA schemes do not apply formal means tests in any of the countries. Legal aid from trade-, labor- and interest organizations usually presupposes membership. Membership in such organizations among deprived groups is rare. Organizations for the poor usually filter out people not belonging to their target groups through informal mechanisms. Service usually is free, without any contribution,

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<sup>21</sup> Litmala, Marjukka 2006 "Evaluating the practical effects of the Finnish reform of legal aid." 6<sup>th</sup> International LSRC Conference 2006 p 166-88. See also Rostii et al 2008 p 101-104.

but exceptions might occur, especially among the membership organizations. Pay phones also are increasingly used in both countries.

LEI have significant contributions and maxima on compensations per incident that are comparable to the contributions in the LAA schemes.

## **6 SERVICES PROVIDED**

### **6.1 Range**

The third main issue for comparing access is the sorts of service the legal aid schemes comprehends and the quality criteria used to secure its professional standard. The report divides the main elements of individual professional legal service into:

- mapping of the client's legal positions according to the relevant law and facts;
- counseling on how they might be used;
- drafting;
- client representation;

and compares the comprehensiveness of the services provided from these elements.

*LAA Schemes.* The Finnish LAA schemes cover all service elements deemed necessary for a professionally sound handling of the problem – independent of whether it is advice to the client, the drafting of documents, negotiations with the counterpart, ADR or litigation that appear as the proper remedy. The sort of service does not matter.

Norway distinguishes between legal assistance outside the courts and before the courts. Representation before the courts requires separate applications. Apart from the application requirement, the principle for service provision is similar to Finland. All assistance that appears professionally substantiated is covered.

Such professional evaluation of proper remedies also is a condition for a grant in both countries, and is usually left to the discretion of the provider, but with some afterward control. Neither the Finnish nor the Norwegian schemes entitle clients to specific legal steps unless they are supported by a professional assessment.

Both countries have provisions on what type of service the different providers can deliver under the schemes. In Norway, the private profession might deliver legal aid both outside and before the courts, while the two legal aid offices in the country are restricted to legal aid outside the courts. If litigation is necessary, the case must be transferred to a private lawyer. In Finland, the legal aid offices deliver all sorts of legal

services, while the private profession is mainly restricted to litigation. FLAA does not cover consultations with a private lawyer in non court matters, but it allows for transferrals if litigation becomes the option. Both jurisdictions have provisions that might be used for limiting the time use covered by the judicare schemes. As mentioned, claims for victim's compensation might also be forwarded by the criminal prosecutor as part of the criminal trial in both countries.

*Non LAA schemes.* Non LAA schemes vary significantly in the range of services they offer. Ombudsmen usually research their cases thoroughly and independently, but will not act as representatives of the complaining party. Some might also issue binding decisions. They do not bring cases before the ordinary courts, but a lawsuit recommended by the Norwegian ombudsman for public administration entitles the complainant to free legal aid without means testing.

The consumer legal aid system offers an extensive range of services, including advice and counseling, negotiation and other ADR, special conflict solving entities, individual and group lawsuits. Together, consumer legal aid in both countries offers a significantly more comprehensive system of legal services for protecting consumer rights than the legal aid acts do for any other sort of problem.

Other public entities in the "third" sector mainly restrict their services to legal aid outside the courts, and some will only give short advices.

The membership organizations generally provide liberal advice, often from non lawyers, but are significantly more restrictive on court cases although they might provide financing for the use of private lawyers.

Volunteer organizations primarily give advice, some of them of a limited nature, while others also provide representation before the public administration.

The service according to LEI is restricted to conflicts and excludes legal counseling in other matters, for example wills, contracts or tax planning, but includes litigation.

*Impact work.* Although primarily focused on handling individual problems, the LAA schemes in both countries also have some leeway for impact work. NLAA has provisions that open for coverage of a limited amount of impact work connected to individual cases, but they are rarely used. FLAA lacks similar provisions. Still the Finnish public offices do some legal policy work on behalf of their clients, while the private providers in both countries do little. Their professional organizations, however,

participate in the public debate and might forward reform proposals to the authorities also on issues that arise from legal aid cases.

Legal aid providers in the third sector are far more involved in impact work. Ombudsmen are supposed to focus on general issues of unfair treatment and discrimination within their fields of work, in addition to handling individual complaints. The institutions within consumer legal aid use their individual cases as a data base for uncovering general weaknesses in the consumer protection and use their experiences in policy recommendations and other impact work. Interest organizations usually have policy work as a primary task and individual legal service might be established to underpin their reform work.

## **6.2 Quality**

None of the two countries put much effort into quality control. For providers within the LAA-schemes, there are requirements about the providers' education and practice. For court representation they mainly correspond to the requirements for a lawyers' license, for legal assistance outside the courts a jurist's exam suffices. Due to the lack of legal services monopolies in Finland, the requirements for delivering service under the LAA schemes are somewhat stricter than the overall requirements for providing commercial legal services. In Norway the general provider requirements correspond with the requirements for legal service provision under the LAA schemes.

Client loyalty is secured through the professional ethics regulations of the associations of advocates in both countries.<sup>22</sup> The legal aid legislation makes these ethical frameworks applicable on providers who are not members of the advocate associations. They also apply to the providers employed in the legal aid offices. Disciplinary measures are mainly applied on complaint to the advocate's associations.

Professional independence also is mainly secured through the ethical regulations of the advocate's associations. The free choice of lawyer is also upheld within the general frames of the schemes. Grantees in Finland might use the legal aid office they prefer for legal assistance outside court and also a lawyer from the private profession for court cases. Norwegian grantees are also free to use a lawyer of their own choice, and to use the two legal aid offices for legal assistance outside the courts. The schemes, however, only cover additional costs for choosing a lawyer located outside the grantee's home district when a sufficiently qualified provider cannot be found there.

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<sup>22</sup> Norway: Forskrift 20 desember 1996 nr 1161 til domstolloven kapittel 11 (Advokatforskriften) kap 12 pkt 1.2. Finland: "Vägledande regler om god advokatsed." Decision from Finlands Advokatförbunds förbundsømte June 9,1972.

Also the free choice of clients is upheld for the private professions in both countries. No obligation to take on legal aid cases exists, except for defenders in criminal cases in Norway. Voluntary agreements between the Norwegian Court Administration and selected criminal lawyers oblige them to accept cases as long as the accused has not made a choice of his own. The Finnish offices are obliged to serve all clients who qualify.

Post graduate training and upgrading courses are offered commercially by the Advocate's Associations in both countries. Courses that specialize in legal aid issues are rare. The Finnish Ministry of Justice offers specialized courses free for the providers in the public offices. The Norwegian Ministry does not offer any training for the providers of legal aid.

Other quality measures are not used systematically neither in Finland nor in Norway. Recently Finland has appointed a commission on quality measures that also will consider the use of "peer review".

## **7 ADMINISTRATION**

The public offices handle all applications for grants in Finland – also for court cases handled by private lawyers. Norway splits the decision making in the judicare schemes between the provider who can grant (but not deny) non litigation aid up to ten hours, the county administrations and the administrative tribunal or the court in question. Finland has a significantly more centralized administration system than Norway, which might impact on the consistency of the decision-making process.

Payment rates are complex in both countries.<sup>23</sup> Providers at the public offices both in Finland and Norway are salaried, while providers from the private profession are paid according to a mix of per hour and per case fees.

From June 2008 Finland mainly pays for judicare according to an hourly fee of 100 euro combined with minimum fees per case. Travel time up to 8 hours also is covered. A raise of up to 20 percent might be accepted under special circumstances. Travel costs and unusual office costs are covered separately.

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<sup>23</sup> Finland: Statsrådets förordning om grunderna för arvoden vid allmän rättshjälp 24.4.2008/290. Norway: Forskrift av 3. desember 1997 nr 1441 om salær fra det offentlige til advokater m.v. (salærforskriften) and forskrift av 12. desember 2005 nr 1442 om salær fra det offentlige til advokater m.fl etter faste satser (stykkprissatser) ved fri rettshjelp og i straffesaker (stykkprisforskriften).

Norway uses per case fees for civil legal aid outside the courts and also for defenders and victim's lawyers in criminal cases. The rates are fine meshed. Civil court cases are paid according to an hourly fee of 95 euro.

VAT is covered separately both in Finland and Norway. The hourly rates therefore are similar in the two countries. Per case fees are difficult to compare, but an estimate indicates that the fee for standard criminal cases allows for more work in Norway than in Finland.

In non LAA schemes payment varies significantly. The public providers are salaried and so are the providers who are employees in the membership organizations. Membership organizations might also use private lawyers according to special agreements. The fee system of such agreements has not been mapped. Among the voluntary organizations, many providers work for free.

The Finnish act on public legal aid offices makes them pivotal institutions in the legal aid organization. The act divides the country into six legal aid district with a varying number of offices. Each district has a director chosen from the office managers within the district. The director has a general responsibility for an even distribution of legal services within the district. Yearly activity goals are set up similar to the goals set for other sectors of public administration. Overall management of the scheme rests with Finnish Ministry of Justice

The Norwegian Ministry of Justice also is responsible for the management of the schemes, but its tasks appear significantly more limited than in Finland. They mainly perform budgetary control and issue regulations on how the statute ought to be applied in practice. The Norwegian legal aid organization seems more static and less oriented towards innovation and continual development than the Finnish one.

## **8 HOW DO THE SCHEMES WORK?**

Statistical comparisons of how the different schemes work are difficult also for the LAA schemes. In Norway, the defender scheme and the lawyer scheme for the victims are separated from civil legal aid when it comes to costs and case loads. Only a few figures are available, mainly on costs. Except for the overall expenses, the following comparison therefore is limited to the civil schemes. Finland, on the other hand, includes the criminal schemes in their overall statistics, and it is sometimes difficult to extract figures on the civil schemes. Estimates and rough calculations have been used when necessary.

## **8.1 LAA schemes<sup>24</sup>**

*Expenses.* Norway's over all expenditures on the LAA schemes are almost three times as high as in Finland (138 mill euro against 52 mill euro). Norway spends approximately fifty percent more on legal advice outside courts, three times as much on criminal cases and six times as much on civil court cases as Finland. The difference is astonishingly large.

A similar difference appears from The Council of Europe's statistics on European judicial systems. Norway reported 151,6 mill euro in legal aid expenses and Finland 55,1 mill euro for 2006. The Finnish expenses are 36 percent of the Norwegian ones. Norway holds fourth place in Europe on legal aid expenses per inhabitant with 32 euro, while Finland are number 8 with 11 euro per inhabitant. On the top we find England and Wales with 56 euro, followed by Northern Ireland with 55 euro and Scotland with 47 euro. Court expenses do not show any similar difference. Finland used 42 euro per inhabitant and Norway 37 euro.<sup>25</sup>

The statistics from the Council of Europe also contain figures on legal aid expenses compared to GDP per capita. Norway used 0,006 percent of its GDP and Finland 0,003 percent on legal aid. Norway's share of GDP spent on legal aid was twice as large as Finland's.

Although many factors influence on the difference, it seems beyond doubt that the Norwegian expenses on legal aid are far higher than in Finland, although Finland seems to have the most liberal framework.

*Coverage and major case categories.*<sup>26</sup> Although far cheaper, the Finnish schemes produce the most extensive coverage. Seventy persons per ten thousand inhabitant received help under the civil schemes in Norway against eighty-five persons per ten thousand inhabitants in Finland.

Finland provides legal aid in approximately fifty family cases per ten thousand inhabitants compared to approximately thirty-five cases per ten thousand inhabitants in Norway. The figures mean that family cases in a broad sense constitute the main part of the case load according to the legal aid acts in both countries.

Finland provides legal aid for problems concerning other private law (with real property, housing, damages, and labor law as the main

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<sup>24</sup> Statistical information for 2006 mainly drawn from Rostii et al 2008 p 95-101 and the 2008 budget for the Norwegian Ministry of Justice.

<sup>25</sup> Commission for the Efficiency of Justice (CEPEJ) 2008 *European judicial systems* Edition 2008 (data 2006) CEPEJ studies No 11. Council of Europe Publishing, tab 2 p 20, and fig 9 p 34.

<sup>26</sup> Statistical information mainly from Rostii et al 2008 and unpublished statistics from the Finnish and Norwegian Ministries of Justice.

categories) in approximately twenty cases per ten thousand inhabitants compared to ten cases per ten thousand inhabitants in Norway.

Welfare law (social help, social security, pensions, health service, etc.) amounts to approximately five cases per ten thousand in both countries. Norway also funds a significant number of cases (five per ten thousand) about involuntary psychiatric treatment.

Finland delivers legal aid in four times as many debt cases per ten thousand inhabitant as Norway, although the overall rate is not very high (0,8 cases pr 10 000 inhabitant in Finland towards 0,2 in Norway).

In Norway, immigrant cases makes up one fifth of legal aid outside court. In Finland, both the legal aid offices and the private lawyers have few immigrant cases. Norway has significantly more asylum seekers than Finland and a larger immigrant population.

*Means testing.* None of the countries gather statistics on the income and property of the clients. It is still possible to make rough estimates how well the schemes cover the poor. Contributions are asked in twenty cases per ten thousand inhabitants in Norway and in thirty per ten thousand inhabitants in Finland. Legal aid with a means test and without a contribution amounts to twenty cases per ten thousand in Norway compared to fifty per ten thousand in Finland.

Almost all of the Finnish civil legal aid is provided to applicants after a means test, while almost one third of the Norwegian civil grants are provided regardless of income and property.

The distributive profile therefore differs significantly. The Finnish schemes provide a far better coverage of the poorest part of the population than in Norway and also a better coverage of the lower middle class. Norway allocates considerably more of the resources to the cases that relates to serious interferences with people's physical and psychic integrity without asking about their means. We might assume that most of them also are fairly poor, but statistical information is lacking.

*Volume and resource use.* Taken together the Norwegian civil schemes handled approximately 33 000 cases in 2006 compared to 45 000 in Finland.<sup>27</sup> Considering the huge differences in overall costs it is surprising to learn that the total number of cases handled in Finland's civil LAA schemes exceeds the Norwegian ones with almost one third. The factors behind the huge cost differences are complex:

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<sup>27</sup> A test scheme at the public legal aid offices in Finland on advice over telephone is not included in the figures. See Rostii et al 2008 p 84-85.

Norway spends more than twice as much per case on civil legal aid outside courts (1 000 euro against 425 euro) and more than three times as much per court case as Finland (4 750 euro against 1 500 euro). Average time use for non court cases in the Finnish legal aid offices is estimated to 4-5 hours in Finland and 9 hours in Norway. Time use for civil court cases handled by private lawyers in Finland is estimated to ten hours compared to fifty hours in Norway, and the average time use on court cases in the Finnish public legal aid offices probably are even lower.

The distribution of the case load on the two categories differs. The Norwegian schemes deliver 50 outside court cases per 10 000 inhabitant against 70 in Finland, while Finland has only 15 court cases per 10 000 inhabitant against 20 in Norway, which explains some of the cost difference. Parts of it might also be explained from differences case structure and from differences in the time costs of the private lawyers and also from the somewhat lower time costs in the public legal aid offices. The major explanation, however, seems to be that most comparable categories of cases are solved faster and in a less resource demanding manner in Finland than in Norway.

*Delivery systems and geographical equality.* The significant differences between the delivery systems impact on the geographical distribution of legal aid. In Norway the private profession is the main the deliverer, while the public offices are the main providers in Finland.

Norway has statistics on civil legal aid outside the courts<sup>28</sup> that show huge geographic variations in the coverage between its twenty counties. For the whole country the private lawyers handled 34 cases per 10 000 inhabitant. The three counties with the highest coverage had three times as many cases per 10 000 inhabitant than the three counties with the lowest coverage, and the lawyers in the three counties with the highest number of legal aid cases per lawyer handled six times as many cases on average than the lawyers in the three counties with the lowest average number of legal aid cases. The differences probably mirror the private profession's market situation and prioritizations. They mean a significant variation between the counties in whether people that qualify actually receive legal aid.

No similar figures exist for Finland. The entrance into the legal aid system, however, is the legal aid offices that are located according to both geographic and population criteria. They shall secure a reasonably even distribution of the legal aid capacity throughout the country. The amount of queuing in the public offices is used as an important gauge on capacity problems and might lead to redistribution of resources between them

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<sup>28</sup> Unpublished statistics from the Norwegian Ministry of Justice and from Tilsynsrådet for advokatvirksomhet.

when substantiated. Such mechanisms lack in the Norwegian judicare schemes.

## **8.2 Non LAA schemes**

As mentioned the overall picture of non commercial legal services of the third sector appears incomplete in both countries. A full mapping of all institutions that provide non commercial legal services to the public has never been carried out in any of the two countries. No precise statistics on clients or cases exists that might provide a reliable overview.

Several services have, however, provided information about their caseloads for the two national reports. The quality of the reporting varies a lot. Put together, the reported figures show approximately 250 000 cases in Norway and 200 000 in Finland. The numbers are incomplete and the real figures are far higher. Still the reported figures alone show that the LAA legal schemes only handle a limited share of all the cases where non commercial legal services are provided.

The significant overlap between the access criteria of the LAA and non LAA schemes that was found in the comparison of the access criteria also appeared in the statistics of the aid actually provided. Several of these overlaps seem unintended and the providers might not be aware of them either.

## **9 POLICY CONSIDERATIONS AND RECOMMENDATIONS**

The Report ends with policy considerations and recommendations mainly for the LAA schemes. They concern the criteria for access, the service provided, the relationship between the commercial market and legal aid, the meaning of public legal aid offices and the role of the third sector. Since the Report was written as part of the reform process in Norway the policy recommendations focus on defects in the Norwegian schemes although some of the suggestions also are relevant for Finland. The proposals are not developed in detail, but formulated as general issues that should be developed as part of the future reform process. Since my paper was written before the Government's Policy Report was published, I cannot tell to what extent my proposals have been adopted by the Norwegian Ministry of Justice.

*Problem criteria.* The Norwegian problem criteria build on a legal typology that is supposed to relate closely to the importance of the case to the individual. The criteria lead, however, to differential treatment of cases of equal significance. Coverage should not depend on the legal categorization. The selection of problems that qualifies for legal aid ought

to build on three main considerations:

- The welfare meaning or welfare seriousness of the problem
- The welfare importance of the possible outcome
- The resources necessary

The Finnish problem criteria fit better with these recommendations. There coverage is mainly independent of legal category. A significant element of discretion in the decision making is unavoidable if the resources of the schemes are to be used effectively.

*Poverty criteria.* Norway should consider the Finnish use of disposable income as the basis for the means test. This concept seems more in accordance with the main goal of the Norwegian schemes, namely to support people who are too poor to afford the market price. Norway also ought to consider the Finnish principle for incorporating property into the disposable income instead of a separate property limit.

The additions to the means limits due to economic identification should be increased to a level similar to Finland. If Norway keeps the principle of economic identification also for other members of multi person households, similar additions should be given to them.

The Norwegian contribution system should be compared to the Finnish system. Contributions ought to increase with economic capacity. However, it should be considered to abandon the present percentage contributions and introduce a system of maximum contributions instead. If the main idea is that the public purse should only cover costs that people cannot afford themselves, then the public obligation to pay should not become activated before the contribution limit is exceeded.

None of the schemes cover costs to the counterpart. The rule applies even when the costs far exceed the legal aid party's capacity to pay. It makes the cost risk a deterrent also against litigating reasonable, well founded claims. A fair distribution of the risk of losing between the party and the public purse should be developed.

The Norwegian scheme has increasingly been used to secure everyone legal aid without costs in matters that are especially intrusive on peoples personal integrity without asking if they can carry the costs themselves. The underlying idea differs from the traditional ideology behind legal aid that aims at securing everyone sufficient resources for necessary legal services. When Norway limits legal aid to the poor and deprived to a narrow selection of types of cases, a policy that expands the coverage for these groups are in better accordance with legal aid's general aim of securing equal access to the justice system for all, independent of their resources. The report questions the prioritization and recommends

that the coverage is expanded according to the Finnish problem criteria for all beyond the economic limits before limited resources are spent on more affluent groups.

*Improvements in the market mechanism for commercial legal service.* A Norwegian Public Study from 2002<sup>29</sup> contains several important proposals for improving the way the legal services market functions for persons who are not professional users. They concern better transparency on prices and quality, especially for the inexperienced users. Too many restrictions exist on establishment, specialization and marketing. They hamper healthy competition and increase prices and ought to be removed or reduced. LEI is widespread, but has too many restrictions and does not produce a sufficient coverage for people who are not covered by legal aid. Bettering the market provision of legal service for non professional buyers mechanism might reduce the pressure on the legal aid schemes by allowing more people to cover their service need commercially. Better LEI coverage will produce similar effects.

Bargaining between the providers and the government on the judicare scheme is limited in both countries. Service is bought for each commission according to fixed prices set by the governments. Informal negotiations with the Advocate Associations take place, but in the end the payment rates are set by a governmental directive. They have for long been set significantly lower than the average market price. The system produces several detrimental effects both for efficiency and quality.

The study points to tendering and other mechanisms for contracting “mass services” for legal aid clients. Such bargaining strategies might better utilize the government’s buying power in the judicare schemes than the present per case payment. They might also produce delivery contracts that better suits providers who have a genuine interest in working with the legal problems of poor and ordinary people.

The proposals in the study that concerns non professional buyers of legal service should be considered anew and accomplished as part of the improvement of public legal aid schemes.

The report also recommends that the proposals in the study are supplemented from the UK experiences with contracting and franchising. A separate summary report has been forwarded from the project on the contracting system in England and Wales.<sup>30</sup>

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<sup>29</sup> Norges offentlige utredninger (NOU) 2002:18 *Rett til rett* (Right to justice)

<sup>30</sup> Johnsen, Jon T. 2008 “Engelsk rettsbistand. Utvikling av en målstyrt organisasjon” Utredning til Justisdepartementet avgitt 5 september 2008 (English legal aid. The emergence of an organization governed from objectives)

*Services.* Both legal services research and the huge volume of cases in the third sector tell that the coverage from the LAA schemes is deeply insufficient. The limitations of the problem criteria are not the main explanation on the shortcomings, but insufficient delivery systems. Previous reforms have mainly focused on the access criteria and been less concerned if the judicare delivery system could help all who qualified. The delivery systems in Norway need far more attention than in previous reforms. A substantial development of the Norwegian legal assistance system is needed, emphasizing short, simple advice in standard (mass) issues.

*Fair distribution.* Norwegian lawyers have no collective responsibility for securing a functional legal aid scheme contrary to the Finnish legal aid offices. A far more evenly distribution geographically of legal aid services is paramount. Making actual coverage depend on the priorities of the private profession leads to huge differences between different parts of the country. The report recommends the establishment of a mechanism that secures a fair distribution of legal aid services between the different parts of the country.

*Public legal aid offices.* The legal aid offices perform several functions in the Finnish mixed model that the Norwegian judicare schemes lack.

The staff at the Finnish offices shows an impressive stability. They develop a special competence in legal aid issues that is scarce among the private profession in Norway. The bulk of the Norwegian judicare lawyers are young with limited experience.

Generally, public legal aid offices are perceived as more oriented towards settlement than the private profession. Public legal aid offices probably will do the evaluations of what sort of legal assistance that is substantiated somewhat different from the private profession. They have an overall responsibility for the legal aid coverage in their districts and therefore they use fewer resources per case than the judicare lawyers and still achieve comparable, if not better, results.

The role of the legal aid offices in the administration of the Finnish legal aid schemes has several advantages. It secures a competent use of the discretionary problem criteria without any commercial interest in the outcome. The decision making can be made from a well developed understanding of the service needs and an efficient use of the capacity and competence available both at the legal aid office and in the private profession in the area. They also might function as a detector of weaknesses in the schemes and increase the potential for innovation.

For efficiency reasons Norway allows the judicare lawyer in question to grant up to ten hours of aid. Those decisions are made from the capacity and interests of the individual lawyer and cannot secure a rational over all use of the available capacity for legal aid. The Norwegian system probably makes strict, mechanical rules on the entitlement to legal aid a necessity.

Establishing legal aid offices in Norway similar to the Finnish ones, will obviously mean a major improvement of the legal services supply and thereby in access to justice among the poorer part of the Norwegian population. A test program for public law centers should be carried out with the aim of making them essential institutions in the supply of non commercial legal services. The Finnish legal aid offices ought to serve as one major model but models from other countries should be tested too.

*Policy formation.* Finland's legal aid policy appears more holistic than in Norway with somewhat stronger emphasis upon integration and coordination of the different sectors and suppliers. Sector thinking is too outspoken in Norway. The civil schemes, the defender scheme, the different victims' schemes and the other non commercial schemes need to be looked upon from an overall perspective. The Norwegian scheme lacks an innovative element that can continuously work with development and improvements. The Norwegian Ministry of Justice appears rather passive when it comes to continuous development of the schemes and mainly occupied with the administration of them.

Non LAA schemes provide a huge and important share of the total supply for non commercial legal services both in Finland and Norway. They cover a far larger volume of service needs than the general legal aid schemes and both countries allocate significant public means to them. It is a challenging and important task to map and study these suppliers thoroughly and develop a well founded strategy for development, division of tasks and cooperation between the different providers of legal aid and other non commercial legal service.