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## Legal Aid in Norway

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### Brief Overview and Introduction

The most prominent feature of legal aid in Norway is the public legal aid scheme. This is complemented by a few high-capacity alternative legal aid providers, such as public legal aid offices and legal aid clinics.

The public legal aid scheme, which receives the bulk of the public funding available for legal aid, is mainly provided through a ‘judicare’ scheme under which lawyers in private practice provide legal assistance to those granted such aid. The lawyers are remunerated through government funding. The conditions for granting legal aid under the scheme are strictly regulated by law, and aid is granted by civil service institutions or the courts. The civil legal aid scheme covers areas of law like divorce, unlawful dismissal, social security, and immigration, and in most cases a financial criterion determines eligibility for aid. The public legal aid judicare scheme is complemented by a few legal aid offices and first line services.

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In addition to the public *judicare* scheme, there are other legal aid providers. Some provide commercial legal assistance, such as legal aid insurance, while some are third sector initiatives. These are oriented around student legal aid clinics, interest organisations providing legal aid to certain groups (such as asylum seekers and drug users), consumer organisations, and labour unions. Some are fully, or partly, government funded, but they remain independently administered.

Legal aid in criminal matters, both to the accused and the victim, is mainly regulated by the criminal procedure code. In most criminal cases the accused is entitled to assistance from a publicly funded defender. The victim is entitled to legal aid in a range of cases, including those involving sexual assault, domestic violence, or serious bodily harm. Claims for compensation for the victim are incorporated in the criminal proceedings, and are argued either by the prosecution or by the victim's publicly funded lawyer (*bistandsadvokat*).

In what follows, this chapter will give a brief introduction to legal aid research in Norway.<sup>1</sup> Next, is a description of the civil public aid scheme's eligibility criteria, its providers, its administration, and how it is used. Alternative publicly funded and administered legal aid schemes, such as public legal aid offices, will then be dealt with. Finally, the chapter will discuss alternative legal aid initiatives, such as legal aid clinics and legal aid provided by public interest organisations.

## Research on Legal Aid in Norway

There has been a considerable amount of research into legal aid, and legal needs, in Norway. This research has examined unmet legal need, doctrinal, and socio-legal analysis of the legal situation of disadvantaged groups, as well as the functioning of different legal aid initiatives. Here, only a brief overview of the most relevant research is given.

The first scientific examination of legal aid issues was *Retts hjelp* ('Legal aid') (Eskeland and Finne 1973), which showed an unmet legal need in Norway and how the legal aid schemes then in place failed to reach disadvantaged groups. The research on unmet legal need was continued and expanded in Jon T. Johnsen's (1987) *Retten til juridisk bistand*, which

consisted of broad empirical, theoretical, and policy-oriented analysis of the extent and causes of unmet legal needs, and of how legal aid schemes could be designed to deal with such issues. The tradition of research into unmet legal needs has continued in several empirical studies (Graver et al. 2002; Haugen and Vigerust 1992; Jordal and Hasle 2014), which all found extensive unmet legal need.

Research has also been conducted on various legal aid initiatives, such as student-run legal aid clinics like *Juss-Buss*, or *Gatejuristen* (The Street Lawyers). This research has focused on doctrinal and socio-legal analysis of the legal problems faced by the client groups, and the working methods and effects of legal aid initiatives (see e.g., Johnsen and Anti 1997; Lied 2013; Bratholm and Sundby 1976; Eskeland et al. 1975; Juss-Buss 1996, 2001; Rui and Jusshjelpa i Nord-Norge 2009; Rønning and Juss-Buss 2011, Graver 1979; Johnsen 1980; Lid 1981; Rønning and Bentsen 2008).

There has been a considerable number of analyses of features of the legal aid scheme, with comparative analysis of international legal aid schemes (Johnsen 2009a), and evaluations of current or pilot legal aid schemes (Andenæs et al. 2005; Botheim et al. 2008; Oxford Research 2013, 2015).

## The Public Legal Aid Judicare Scheme

The civil public legal aid scheme in Norway is based on a ‘judicare’ model. Lawyers in private practice provide legal aid to eligible clients and are remunerated out of public funds. The scheme is regulated by the Legal Aid Act, which lays down the eligibility criteria; both financial and material that have to be fulfilled in order to get legal aid.

The Norwegian public legal aid scheme’s stated purpose is to be a ‘social support scheme to ensure that the necessary legal assistance is provided to people without means, so they have access to legal advice and representation in cases of great personal and welfare importance.’ This avowed purpose serves as a guideline for the interpretation and application of the Act and also explicitly identifies the welfare ideology inspiring it. The issue of the Act’s welfare ideology, and whether it actually conforms to this ideology, is discussed in Chap. 10.

## History

There have been elements of regulation of legal assistance in Norway since Viking times (approx. eighth to eleventh century AD), and the first formal laws of Norway, from the late 1200s, had provisions for royal ombudsmen, who were entitled to file suits on behalf of those without sufficient knowledge or power to represent themselves (NOU 1976, p. 38). During the 1500s and 1600s, officially appointed lawyers—procurators—were obliged to represent ‘the poor, widows, the insane, and the defenceless’ before the courts, without other remuneration than a percentage of the claim received if the client won the case. This scheme, with only minor adjustments, continued into the 1800s. After 1893, the Ministry of Justice took over the administration of the legal aid scheme, and had discretionary power to grant legal representation in court cases. This was transferred to the courts in 1937. Legal aid outside court cases was not considered a state matter, but in the major cities municipal legal aid offices were established to provide legal aid. The first was the office for legal aid in Oslo, established in 1893; it was inspired by the Danish ‘Studentersamfundets Retshjælp for Ubemidlede.’ This office is still in operation, see below. Similar offices existed in Bergen, Trondheim, and Stavanger but these have since closed.

The legal aid scheme was informal and discretionary, and only regulated by a circular from the Ministry of Justice, until reform work began in the early 1970s. In 1980, the Legal Aid Act was passed; it implemented the current public legal aid scheme (Legal Aid Act 1981). The law provided for wide eligibility, especially since it contained no restriction on which types of cases could be granted legal aid. However, after only a few years, the Act was amended, and restrictions on eligibility were introduced. Although the Act has been amended several times, the basic structure of the scheme remains the same.

## Eligibility

Under the current public legal aid scheme, legal aid will only be granted if the eligibility criteria of the Legal Aid Act are met. There are both financial and material criteria for eligibility, and restrictions on subject, necessity, and subsidiarity.

## Financial Eligibility

In most instances, there is a financial eligibility criterion that must be met if legal aid funded by the public legal aid scheme is to be granted. However, there are no such criteria in cases involving matters considered to be particularly important, such as domestic violence, the use of force in psychiatric health care, or child welfare cases (Legal Aid Act, section 11 and section 16).

When financial eligibility is assessed, both income and assets are taken into account, as well as whether the applicant has a spouse/co-habitant or not. There is then no further assessment of the applicant's actual ability to fund legal aid by themselves: no adjustments are made, for instance, on the basis of the total cost of legal assistance needed, or any particularly high outgoings the applicant has, such as child maintenance or medical expenses.

A person must have less than 246,000 Norwegian Kroner—NOK (27,300 €) in gross annual income, or, if they are cohabiting, the gross annual income of the household must be below 369,000 NOK (40,750 €), in order to be eligible for legal aid. For comparison, the average gross annual income in Norway is currently 518,000 NOK (57,000 €) (SSB 2016). In addition, a person must have net assets below 100,000 NOK (11,000 €). Assets, such as cars or holiday cottages, are included in the assessment (Justis- og politidepartementet 2012, section 3.4).

If either of these financial eligibility criteria is not fulfilled, legal aid can be granted under a discretionary exemption clause (Legal Aid Act 1981, section 11 subsection 3, and section 16 subsection 3) but it is rarely employed, except for exemptions of housing of normal value (Rønning and Bentsen 2008).

These financial criteria have not been changed since 1 January 2009. This has in effect reduced the income threshold for financial eligibility for legal aid, as average salaries have increased since that time.

## Material Criteria

The Legal Aid Act contains clear cut provisions identifying those cases in which an applicant would be eligible for legal aid. In general, only if the

applicant's case falls within the areas of law specifically mentioned in the Act will legal aid be granted.

Coverage under the law has been steadily developed since it came into force. The overarching principle is said to be that cases of importance for the welfare of the applicant should be prioritised. The original preparatory work of the Legal Aid Act that established the current system, states that the rationale for choosing certain areas of law was that these were ones commonly seen as being most significant to people, and affecting their personal relations the most. Typically they involved employment, children, family, divorce, tenancy, and social security. In subsequent years, there has been little reform of the scope of the law. A few areas of law have been added, in particular ones relating to mental health care and immigration issues.

The Act distinguishes between legal aid cases involving means testing (where the financial eligibility criteria apply) and cases without means testing.

In certain matters deemed to be of 'great personal or welfare importance for a person' (Justis- og politidepartementet 2004, p. 29), legal aid is granted without means testing (Legal Aid Act 1981, section 11 subsection 1, and section 16 subsection 1). This includes the following:

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

In other areas, legal aid is only granted if the financial criteria are fulfilled (Legal Aid Act 1981, section 11 subsection 2, and section 16 subsection 2). These are matters considered to be of crucial importance to the welfare of the person concerned.

They include:

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

In matters other than those specified in the Legal Aid Act, legal aid will not normally be granted. There is, however, an exemption clause from this, which allows the County Governor or the court to grant legal aid in any legal matter, though the use of this clause is very limited (Justis- og politidepartementet 2012; Rønning and Bentsen 2008).

The scope of the scheme has been extensively criticised (see the review in Botheim et al. 2008, p. 100; Justis- og politidepartementet 2008, p. 67). The criticism has mostly been that the general scope of the scheme is too limited and that it is poorly adjusted to the legal need that research and practitioners suggest exists in the population. In addition, the delimitation of the areas covered under the scheme has been criticised for being random (Rønning and Bentsen 2008). An example of such randomness is that legal aid is granted in tenancy cases if the applicant's contract has been terminated due to a normal breach of contract but not if it has been terminated due to a gross breach of contract. Similarly, legal aid is provided in cases involving deportation following a breach of the immigration act but not when deportation follows a breach of the criminal code.

### **Other Criteria**

Coverage under the public legal aid scheme is subsidiary. Thus legal aid will generally only be granted if the need for legal aid is not covered by anything else, such as legal expense insurance, public information offices such as consumer advice centres, or the administrative obligation to give

guidance to the public (Legal Aid Act 1981, section 11 subsection 2, and section 16 subsection 2). This significantly limits the availability of legal aid in administrative matters, as under the Norwegian administrative procedure act, public officials have a wide-ranging obligation to give guidance to individuals. This is one of the more contested issues regarding the Norwegian Legal Aid Act. Many of the most disadvantaged groups, such as prisoners, often have legal disputes with administrative bodies but under this rule are excluded from the legal aid scheme.

There are general necessity criteria in the Legal Aid Act, which limit the scope of the Act in cases where legal aid is unnecessary in a particular situation, because the problem is not a legal one, or because legal aid cannot contribute to solving the problem. For legal aid in the form of representation in court cases, the Legal Aid Act stipulates that the granting of legal aid has to be reasonable. This entails a consideration of various issues, including the cost of the case in relation to the value at issue, and the proceedability of the court case.

As a central principle the Legal Aid Act limits cover to physical persons (Legal Aid Act 1981, section 4): commercial entities are excluded from the scheme.

## Grants and Providers of Legal Aid

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

If legal assistance is granted, the lawyer will be paid for the work according to set rates for the hours needed for the case—so-called fixed fees. For instance, in most immigration cases, one will receive legal aid for between three and seven hours, while in family cases involving divorce one will receive legal aid for 12 hours. The number of hours allotted for different issues are set by the Ministry of Justice. The client is entitled to the necessary legal assistance from the legal aid lawyer, regardless of whether the case is more complicated than provided for in the fixed fees. This means that lawyers working on such cases would receive less than the nominal hourly fee for legal aid cases.



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

If legal aid is granted, court fees will also be covered under the legal aid scheme, together with costs of interpretation and costs relating to evidentiary issues. A grant for legal aid will not cover the legal expenses of the opposing party, which the legal aid client will generally be obliged to pay if he or she loses a court case.

The hourly fee for lawyers working under the scheme is currently 995 NOK (110 €) (Justis- og politidepartementet 2015, section 1). In 2013, the average hourly fee for lawyers in Norway was 1403 NOK (155 €) (Den Norske Advokatforening 2014, p. 21),<sup>2</sup> while the average hourly fee for lawyers with mostly private (as opposed to corporate) clients was 1254 NOK (140 €).

The client has to pay a contribution. The rate is currently 995 NOK (110 €) for legal aid outside court. For legal aid in court proceedings, the contribution is 25% of the cost but is capped at 4975 NOK (550 €) (Regulation to the Legal Aid Act 2005, section 2–1).

As the providers under the scheme are lawyers in private practice, the scheme provides traditional legal assistance comparable to that which any self-funding client would have. All providers under the scheme are licensed advocates or deputy advocates, bound by the common regulatory framework and ethical codes covering lawyers in Norway. However, the use of private practice lawyers rather than traditional legal aid lawyers means that it is harder to remove traditional barriers to accessing legal assistance, such as lack of problem awareness (Eskeland and Finne 1973, p. 212), cultural issues (Johnsen 1987, p. 503), lack of language skills (Andenæs et al. 2001, p. 21), lack of knowledge of the legal aid schemes (Gautun 1997, p. 75), and the geographical distribution of legal services. Less resourceful clients also lack the legal knowledge to assess the performance of their lawyer, so the quality assurance system, with disciplinary boards organised by the Bar Association (or other supervisory boards) does not necessarily ensure the quality of the legal aid work done by the lawyers (NOU 2002:18). In this regard the fixed fees, which encourage

the lawyer to spend as little time as possible on cases, give rise to concern about the quality of the scheme. The Bar Association also claims that low payment under the scheme discourages lawyers from doing legal aid work: they prefer more profitable self-funding clients (Den Norske Advokatforening 2015). The contention is that this impacts the general quality of the legal aid work done by lawyers, as the best lawyers prefer other types of work, and that it hinders recruitment to that section of the profession. The political debate on the level of legal aid fee has been heated, and resulted in the Bar Association staging a week-long strike in Spring 2015 (Sæther 2015).

## **Administration of the Legal Aid Scheme for Civil Matters**

The Norwegian Ministry of Justice and Public Security is responsible for administering legal aid in Norway. As most of the publicly funded legal aid scheme is regulated by the Legal Aid Act, most changes to the scheme require an Act of Parliament.

The County Governors (Fylkesmannen) are the decision-making body of first instance for applications for legal aid. They mostly deal with applications for legal aid outside the courts, and cases regarding the use of the exemption clause in the Legal Aid Act, which gives them discretionary power to grant legal aid even if the standard criteria are not met. Decisions can be appealed to The Civil Affairs Authority, and, in turn, be subject to judicial review by the courts.

Lawyers themselves are entitled to grant legal aid outside court, if all the criteria for legal aid are satisfied. Most applications for legal aid outside the courts are handled in this manner. In 2014, 15,235 of 18,617 grants for legal aid were decided by the lawyers themselves (Fylkesmannen i Oslo og Akershus 2015). When payment is made, the decisions of the lawyers are reviewed by the County Governor, who has the power to overturn the lawyers' decision.

The courts decide on most applications for legal aid before the courts. The decisions are made by the judge preparing the case. Decisions regarding legal aid can be appealed.

## Use of Public Legal Aid Schemes

Precise statistics for the use of the public legal aid schemes are not available. However, I will point out certain figures that might shed light on the issues.

### Use of the Judicare Scheme for Legal Assistance Outside Court

Under the publicly funded legal aid ‘judicare’ scheme, about 18,617 applications for legal assistance outside court were granted in 2014. This amounts to 37.34 cases per 10,000 inhabitants. The ten areas of law for which most legal aid was granted are listed in Table 2.1 as:

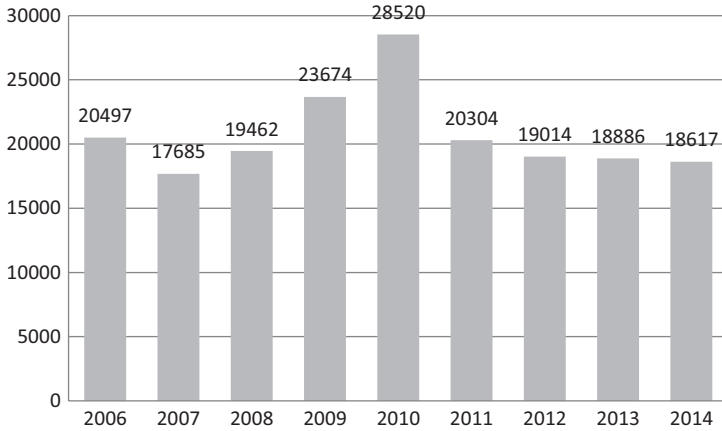
As we can see, a considerable proportion of the legal aid applications granted relates to various legal issues regarding immigration: these are 36% of all cases. Various family law matters, particularly those relating to termination of marriage, constitute 23% of cases.

If we look at changes in the number of cases for which legal assistance was granted (Fig. 2.1), we see an increase in 2009 and 2010. This is mostly due to a sharp increase in the number of applications for legal aid in asylum cases and other immigration cases, which corresponds to the rise in asylum applications in Norway during those years. Apart from this, the number of legal aid applications granted each year is relatively stable but slowly decreasing. The downward trend might be explained by the fixed financial criteria for income, which have not been changed since 2009.

**Table 2.1** Number of legal aid cases, 2014

Asylum	4094	22%
Child custody	2257	12%
Complaints about social security decisions	1730	9%
Immigration cases (deportation, etc.)	1559	8%
Divorce	1217	7%
Consideration of reporting certain crimes	890	5%
Asylum cases involving minors	871	5%
Employment	835	5%
Compensation for wrongful prosecution	798	4%
Other family cases	670	4%

Source: Unpublished statistics from the Civil Affairs Authority



**Fig. 2.1** Legal assistance granted (Figures from unpublished statistics from the Civil Affairs authority)

### Use of the Judicare Scheme for Legal Aid in Court Proceedings

There are no published statistics on the current use of legal aid in civil cases before the courts. However, some figures might shed some light on the scope of legal aid grants.

According to the Council of Europe's Commission for the Protection and Efficiency of Justice (CEPEJ 2014), Norway states there were 6429 cases before the courts for which legal aid was granted in Norway in 2012. This amounts to 1289 legal aid cases per 10,000 inhabitants. To put this in context, in 2012 there were 15,576 civil cases before courts of first instance, 1951 before the appellate courts and 82 before the Supreme Court. Thus the proportion of civil cases brought to the courts with legal aid can be said to be quite high.

In preparation for the most recent Government Policy paper on legal aid, published in 2009, an overview of the use of the legal aid scheme was presented. This reports that in 2007 there were 5420 cases in which legal representation before the courts was granted. This represents approximately 1153 cases per 10,000 inhabitants. Over 50% of these were child custody cases, 15% were cases relating to the use of force in psychiatric treatment, and 10% related to issues regarding divorce, such as child custody. Other matters thus constitute only a very small part of the total

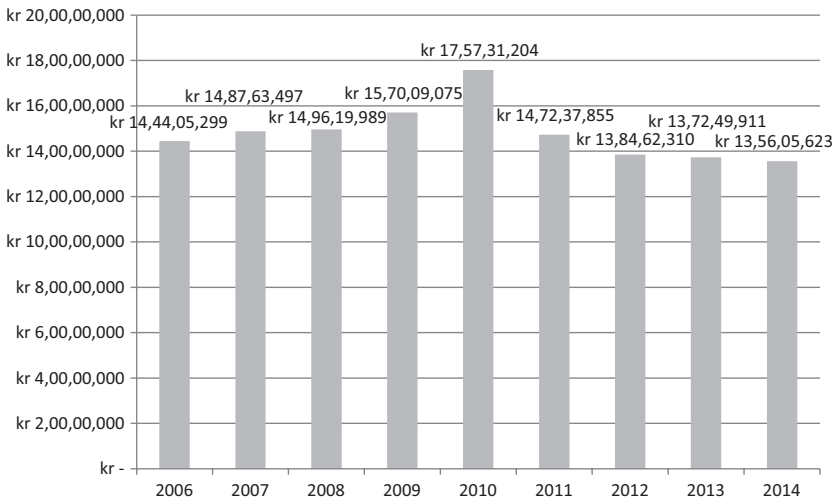
use of the scheme. Tenancy cases, for instance, were only 0.4% of the legal representation granted (Justis- og politidepartementet 2008, p. 24).

## Legal Aid Expenditure

Legal aid expenditure in Norway is demand-led—in principle legal aid would be granted to all entitled to it under the Legal Aid Act, regardless of budget caps. From an international perspective, Norwegian legal aid expenditure is high: it is the country spending most on legal aid (in civil and criminal cases combined) among Council of Europe members, (53.55 € per inhabitant in 2012) (European Commission for the Efficiency of Justice 2014, 47 f.). Legal aid expenditure as a percentage of GDP is 0.07%, placing it as one of the top five countries in Europe.

## Expenditure on Legal Assistance Outside Courts

Figure 2.2 shows expenditure on legal assistance outside court, in nominal figures (NOK). In 2014, spending was 135 million NOK (11,500,000 €).



**Fig. 2.2** Annual spending on legal aid outside court (Figures from statistics from the Civil Affairs Authority)

We see an increase in legal aid expenditure in 2010, mostly attributable to a sharp rise in legal aid applications for asylum cases, which corresponds to fluctuations in the number of asylum seekers coming to Norway. The cost of legal assistance to asylum seekers was four times higher in 2010 than in 2006.

### Legal Representation Under the Judicare Scheme

No statistical information is published on legal aid expenditure on legal representation in court cases. The State Budget, however, predicts how much will be spent on legal representation, and can serve as an indicator of legal aid spending. As mentioned above, legal aid expenditure in Norway is demand-driven, and there is no cap on grants of legal aid.

The total amount of legal aid expenditure in civil cases budgeted for in 2015 was 797,451,000 NOK (88,605,000 €) (Justis- og beredskapsdepartementet 2015), a nominal increase of 12% from 2014.

Fig. 2.3 is a representation of budgeted legal aid spending in NOK. As can be seen, budgeted spending is quite stable, but, in nominal figures, gradually increasing.<sup>3</sup> The cost of legal aid before the courts is roughly six times as much as that of legal aid outside court, so court cases are considerably more expensive.

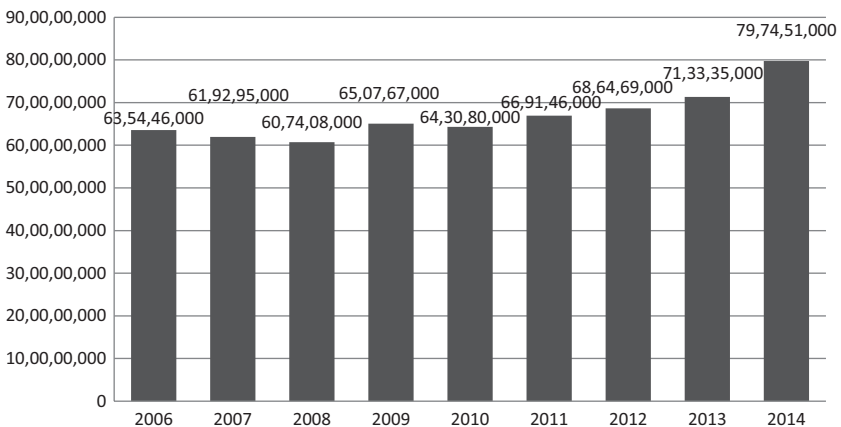


Fig. 2.3 Annual budgeted spending on legal advice (Figures from State Budget chap 470:72)

Although there are no figures available for the use of the scheme, the steadily growing budgets for legal aid before the courts probably mirror an increase in demand for legal aid, though some of the increase might also be attributable to the increasing cost of legal aid cases.

### **Expenditure on Alternative Legal Aid Schemes**

The publicly funded *judicare* scheme is allotted the bulk of the funding available from the legal aid budget of the Ministry of Justice (Justis- og beredskapsdepartementet 2015). A comparatively small portion is assigned to other legal aid schemes, as will be described below. In the State Budget for 2015, the figure was 32,333,000 NOK (3,592,000 €). This is 4% of the total budget for legal aid.

### **Public Legal Aid Offices**

There is currently one public legal aid office in Norway, called *Fri Rettshjelp* (Free Legal Aid). It is situated in the inner city of Oslo and is oriented particularly towards meeting the legal needs of the inner city population, especially of immigrant groups. The office has been in operation since 1893. It is funded by the government and the municipality.

The public legal aid office is staffed by private practice lawyers who work there part time. The clients are mostly from disadvantaged groups. Almost 80% have a non-Norwegian background, and almost 96% have incomes low enough to qualify for legal aid (Roli 2015). The inner city location, the informal manner of client communication, and the way the office wins the confidence of the client group stand out as reasons why it manages to reach such disadvantaged groups (Andenæs et al. 2005). In addition, clients are exempt from paying the contribution normally applicable to all legal aid given under the public scheme. This exemption also affects how the office manages to reach out to clients (Roli 2015).

The legal aid office generally handles cases in the way laid down in the Legal Aid Act—only supplying legal aid if the client meets the eligibility

criteria. However, it has a far less restrictive approach when applying the exemption clause of the Act, and will grant legal aid in cases not normally covered by the Act if the client is considered to be in great need. In 2014, the office handled 3235 cases. Of these, 54.6% were outside the material scope of eligibility of the Legal Aid Act. The majority of cases involve the law relating to the family, immigration, housing, social security, or employment. The office identifies cases involving unpaid wages, social security, and housing as areas where there is great need for legal aid, and which are not covered by the Legal Aid Act (Roli 2015).

The office is unable to meet the demand for legal aid—in 2015, 700 clients who contacted the office had to be rejected due to lack of capacity.

## Legal Expenses Insurance

Legal expenses insurance, where the cost of legal assistance is covered through commercial insurance schemes, is one of many ways of providing access to legal aid. As has been mentioned, the public legal aid scheme is subsidiary to legal aid provided by legal expenses insurance, so this constitutes an important restriction on the legal aid scheme. Some companies set up specifically to provide legal expenses insurance, employ in-house lawyers to give legal aid to policyholders.

Legal expenses insurance is normally part of the cover provided by more comprehensive policies, such as house or car insurance. House insurance covers quite a wide range of risks but does not generally cover legal expenses involving family law, labour law, or administrative law. Legal expenses insurance can also be bought as a separate policy.

Legal expenses insurance is obtainable not just for court cases, but for all levels of legal aid, as long as a dispute is involved. Cover will normally be limited to 80,000 or 100,000 NOK, (8800–11,100 €), and the client will normally pay a contribution. In 2014, legal expenses policyholders filed 11,293 claims, and the payout was 272 million NOK (30,220,000 €) (Finans Norge 2015).

In addition to the legal expenses insurance just described, another common type of legal expenses policy provides conveyancing insurance. These policies normally cover all expenses arising from disputes regarding



the property, including legal fees. In the light of current legislation on conveyancing, such policies have been criticised for increasing the number of disputes.

## Alternative Legal Aid Schemes

In the following, I will highlight some of the more notable alternative legal aid schemes (for a complete review, see Johnsen 2009b). I will focus on those fully or partly funded by the Ministry of Justice. Most of these are generally quite independent but the grants for legal aid given by the Ministry mean it has some control of these initiatives. Legal aid is also given by a wide range of other providers: trades unions, special interest organisations, or ombudsmen.

A vast amount of legal aid is provided by such initiatives. Johnsen (2009b, pp. 72–78) estimates that at least 250,000 cases involving legal aid were handled outside the public legal aid scheme. He considers this to be a conservative estimate, and suggests the actual figure might be twice as high, or more. The public legal aid scheme handles around 33,000 cases, so the role of the government legal aid scheme seems to be comparatively modest.

There is no central coordination of, or policy for, the wide range of commercial, public and not-for-profit legal aid providers. This might lead to a problem of overlapping legal aid initiatives in some areas, and gaps in legal aid coverage in others (Johnsen 2009b, p. 78).

## Pro Bono Work

The largest pro bono scheme is *Advokatvakten*, which is organised by the Norwegian Bar Association in most municipalities throughout the country. Under the scheme lawyers provide free legal aid in 30 minute consultations, in all kinds of cases, and to all types of people. The legal aid is normally dispensed in public buildings, such as town halls or libraries. It is estimated that 2000–4000 cases are handled annually (Johnsen 2009b).

There have also been several pro bono initiatives aiming to public interest cases before the courts. The first was called 'Advokatforeningens prosedyregruppe i utlendingsrett' (the Bar Association's Group for Procedures in Immigration Law), established in 2007. The initiative aims to provide expert legal aid to immigrants, in order to try important or principled cases decided by the immigration administrative bodies before the courts. A secretariat of law students, headed by experienced immigration lawyers, received and screened a number of immigration cases, and selected a few for trial. Between 2007 and 2011 the group received around 1020 cases, and of the 24 that had been finally decided in 2011, 18 were decided in favour of the immigrant. This included several cases thought to be setting important precedence (Humlen and Myhre 2011).

Some major law firms have *pro bono* agreements with other legal aid initiatives, promising to take to court (or at least consider) cases that the initiatives do not have the resources to handle themselves. This would apply to student legal aid clinics, which are not allowed to go to court. The most extensive agreement is perhaps the one between the Norwegian Association for Asylum Seekers (NOAS) and the law firm Wiersholm (Austenå 2015), one of the largest and most high-profile commercial law firms in Norway.

## Student-Run Legal Aid Clinics

There are currently five student-run legal aid clinics, situated in the four biggest cities in Norway. Most are affiliated to a university. The legal aid clinics are staffed mostly by senior law students, with some form of supervision by the law faculties.

*Juss-Buss*, which literally translates as 'Law Bus' is the oldest and most active today, see Chap. 7. The clinic started in 1971, inspired by outreach initiatives in the USA, and was part of the radical student movement in Norway in the 70s (Andenæs 1975; Capua 1975, 2001; Johnsen 2003). Similar clinics were started in other major Norwegian cities in the 70s and in 1980.

The student legal aid clinics all share a goal of providing outreach legal aid to vulnerable groups, while educating students in practical legal work.

Several of the clinics also do legal policy work, and gather data and conduct research on the legal situation of their client groups.

Student legal aid clinics are mainly staffed and administered by senior students, who handle most of the case work and administration, without faculty supervision of individual cases. The work is based on a collective approach: one case worker is responsible for preparing cases through client interviews and legal research but a group of students go through all the cases and make sure the work is done in a responsible manner. Each clinic consists of between 17–30 students.

Their approach to providing legal aid is especially focused on offering a low-threshold alternative, thus removing the barriers to seeking legal assistance met by vulnerable groups. This is mainly done through an extensive outreach programme. The students regularly visit prisons in their local region. In the case of clinics situated in the more rural parts of Norway, such as ‘Jusshjelpa i Nord-Norge’ in the north, outreach work is done to provide legal aid in areas where there are few lawyers. In addition they visit adult education centres, shelters for the homeless, information centres for foreign workers, and similar institutions (Skårberg 2016, p. 43).

The clinics do not just provide legal aid in individual cases. Most have extensive programmes of legal information and education. Since the 1970s, a key concern has been to increase legal awareness among client groups, thereby improving the clients’ situation by enabling them to avoid legal disputes, or handle them without aid. Such work is being done through lectures and do-it-yourself courses on legal issues, by publishing books or leaflets offering practical advice in clear and simple language, or by training in the client groups. The latter has proven particularly effective in reaching minority women, which is the aim of the clinic specialising in legal aid for women (JURK) (Hellum and Taj 2014).

In addition to legal aid, all the clinics do a considerable amount of legal policy work, which is regarded as a way to improve the legal situation for the client groups. All clinics work on reforming the public legal aid scheme, and on reform issues within chosen fields of law.

The student-run legal aid clinics handle a great number of cases, compared to the *judicare* scheme. Approximately 17,000 cases each year are handled by the five legal aid clinics.<sup>4</sup> Given that public spending on such

clinics is about 12 million NOK (1,330,000 €) annually (Justis- og beredskapsdepartementet 2015), they provide very cost effective legal aid.

## Gatejuristen

‘*Gatejuristen-prosjektet*’ (The Street Lawyers) is a legal aid initiative aiming to supply legal aid to people with drug addiction. It is run by a small professional secretariat, and volunteers, mostly lawyers, providing outreach legal aid. Administratively it is a part of The Church City Mission, a charitable social work organisation with links to the Norwegian Church. It was set up in Oslo, in 2005, and was partly inspired by a similar project in Denmark (see Chap. 8), and by the outreach legal aid work done by the Norwegian legal aid clinics (Lied 2013). At present, *Gatejuristen* operates in ten cities around the country, and provides legal aid in over 2500 cases annually (Mørch 2015).

Legal aid is provided to everyone in the defined client group—people with drug addiction. This is done by various kinds of outreach work: for example, by attending social care centres or health centres, or just by walking the streets talking to people in the drug community. Through its years of operation, *Gatejuristen* has become well-known and trusted among the client groups, and thus clients often seek legal aid at *Gatejuristen*’s office, although they would not contact a traditional legal aid lawyer (Lied 2013).

The cases handled are mostly outside the scope of the public legal aid scheme. In Oslo, cases involving social security law, health law, criminal law, compensation and insurance law, and debt law are most frequent. In addition to providing legal advice and assistance, *Gatejuristen* handles cases before the courts, particularly cases that might set precedence. In 2014, 969 cases were handled by the 70 volunteers working in Oslo. In addition to legal aid in individual cases, *Gatejuristen* also does general information work, legal policy work, and basic research into the legal needs of the client group (Mørch 2015).

The funding for *Gatejuristen* comes mostly from the Ministry of Justice, the municipalities, and from donations from commercial businesses and charitable organisations. In addition, most of the legal aid work is done by volunteer lawyers.

## Norwegian Association for Asylum Seekers: NOAS

NOAS is an example of a special interest organisation involved with legal aid. It is an independent charitable organisation working to protect institution of asylum and the interests of individual asylum seekers. They do information work, policy work, and provide legal aid in individual cases.

Legal aid work has become an increasingly important part of NOAS's work. In 2014, they handled 1354 asylum cases, and provided legal aid in 230 of them. Legal aid is given at all stages of the asylum process, but the organisation is mostly contacted by people whose application has been rejected by the immigration authorities. NOAS struggles to meet the demand for legal aid, and is forced to prioritise certain cases for which to provide aid. In cases where NOAS has given legal aid, 46% have gained a positive decision. The largest area of work for NOAS is their information project, through which newly arrived refugees are given legal information on the asylum procedure. In 2014, they gave information to 9453 refugees (Austena 2015). The funding for the organisation comes from members' fees, project support from various public aid schemes, and contributions from individuals and charitable funds.

## Legal Aid Policy and Legal Aid Reform

As we have seen, several aspects of the Norwegian public legal aid scheme have been politically contested. Much of the criticism directed against the scheme regards eligibility, which, it is claimed, is too restrictive and does not match unmet legal needs, especially those of the most disadvantaged groups. The structure of the public legal aid scheme has been criticised for encouraging lawyers to do substandard work, or to work without remuneration. It is claimed that this affects both the quality of the legal aid provided under the scheme, and recruitment to the part of the legal profession working on legal aid cases. The lack of outreach elements and other alternative ways of providing legal aid, in a way that will reach disadvantaged groups, has also been criticised.

The Norwegian legal aid scheme has also been criticised by international human rights bodies. In the 6th Periodic Cycle of review of

Norway's compliance with its obligations under the UN Convention on Civil and Political Rights (CCPR), undertaken in October 2011, The UN Human Rights Committee expressed concern as to whether the current legal aid system was adequate to meet the requirements of CCPR article 14, and encouraged the Norwegian government to review it in order to ensure full compliance.<sup>5</sup> In the review of the combined 6 and 7 periodic reports from Norway to the UN Committee Against Torture, undertaken in November 2012, the Committee expressed concern about the limited legal aid available to persons facing deportation or return (CAT 2011). The legal aid scheme was also part of the assessment of compliance with access to justice standards in the context of Norway's use of solitary confinement. The Norwegian legal aid scheme has been subject to scrutiny by the European Court of Human Rights, in regard to ECHR article 35 issues on the exhaustion of domestic remedies and legal aid. However, the issue was not decided upon, as the application to the Court was dismissed as manifestly ill-founded for other reasons (Agalar vs Norway 2011). Several similar Norwegian cases involving legal aid in immigration cases have been subject to ECHR consideration, where the ECHR applied similar tests, but the arguments were struck down for other reasons.<sup>6</sup>

The deficiencies of the public legal aid scheme have to some extent been recognised. Most political parties in Norway have for a period of time pledged to reform and improve the legal aid scheme. However, there have been few practical changes.

## Conclusions

The broad image of the Norwegian legal aid scheme emerges as being based on a comprehensive, traditionally oriented, and costly public legal aid scheme, with several deficiencies as to how the scheme manages to meet the legal aid needs of the population. In particular, the public scheme's lack of outreach and limited coverage of legal areas make it incapable of ensuring access to legal assistance for all. The most disadvantaged groups are particularly ill served. This is partly due to the reliance on traditional providers. The shortcomings of the public scheme mean it

is incompatible with the traditional belief in a welfare state ensuring inclusion and social security for everyone. The considerable role of alternative legal aid providers is likewise at odds with the welfare ideology. This goes for both the extent of the sector, which is very much greater than that of the public schemes and their role; without such initiatives, many of the most disadvantaged would completely lack means of accessing and utilising the legal system. The role of alternative legal aid providers also includes innovation. They employ new, untraditional means to enhance access to legal assistance, on the basis of knowledge of the needs of client groups, the effectiveness of different legal aid strategies, and the workings of the legal system. This might provide a basis for the reform of the public system that would make it into a public legal aid scheme which, in keeping with welfare state ideology, provides access to the law for everyone.

## Notes

1. I have presented parts of this chapter as a national report at the International Legal Aid Group conference in the Hague in 2013.
2. Figures are from 2013, when the legal aid fee was 970 NOK (108 €).
3. The increase from 713,335,000 NOK (75,087,894 €) in the 2013 budget to 797,451,000 NOK (83,942, 210 €) in the 2014 budget seems to represent an increase in demand for legal aid for 2014 that was unaccounted for in the budget, as the budget was adjusted during 2014, and thus the apparent increase appears to be more gradual than the budget figures indicate.
4. Based on information from the annual reports of the clinics.
5. CCPR/C/NOR/CO/6: '6. The Committee is concerned that means tested legal aid fails to take account of the actual circumstances of the applicants, and is assessed without regard to the actual cost of the legal service being sought. Moreover, legal aid is not available at all with regard to certain categories of case. (art. 14)  
The State party should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so require.'
6. Cf. for instance, ABDOLLAHPOUR vs. Norway app. 57,440/10 (Dec.) and ALI vs Norway app. 22,669/10 (Dec.)

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