

International Legal Aid Conference

Harvard 2003

National report - Finland

1. The organisation of legal aid

Legal aid is governed by the Legal aid act, the Law on the state legal aid offices, and three Government decrees: one on legal aid, one on legal aid fee criteria and one on the state legal aid offices. (These are available in English.)

Legal aid is **administered by state legal aid offices and by decisions of the courts**. Legal aid is granted at state legal aid offices. If the legal aid office does not accept the application, and deems that there is no reason for a rectification, application for legal aid can be submitted to the court for a hearing. If the court does not grant legal aid, it is possible to appeal.

The legal aid office has the right to contact the authorities and insurance companies so as to check the information that the applicant has provided on his or her financial circumstances. Also banks are under the obligation to give the legal aid office the assistance it needs, if there is reason to doubt the reliability of the information supplied by the applicant. If bank information is to be requested, the applicant must be notified in advance of the request.

A recipient of legal aid must inform the legal aid office of changes in his or her circumstances, including income, expenses or wealth. If the financial circumstances of the recipient of legal aid change, the legal aid office may amend the legal aid decision to take account of the change. And again, as in any decision the legal aid office makes concerning legal aid, the decision may be submitted to the court for a hearing.

The funding of legal aid comes from the state budget via the Ministry of Justice.

State Legal aid offices

The state legal aid offices have two tasks: to provide legal aid and to grant it. Since last summer, June 2002, the task of granting legal aid through the legal aid offices, was extended to those legal aid applicants, who wish to have a private attorney appointed. Before this the legal aid offices only granted legal aid to their own clients.

With population of about 5,2 million, and area about 340 000 km², Finland has 67 legal aid offices, which are located mainly in municipalities with a district court. The legal aid offices have 14 branch offices and 113 branch clinics where clients are seen as required.

Legal aid offices are small: they have from 4 to 26 salaried employees. The total number of employees is just 460, of which half are lawyers (public legal aid attorneys) and the other half office staff. Applicants of legal aid may choose which legal aid office they wish to use.

The offices are divided to six legal aid districts. One regional head of office is appointed a head of district for a maximum of five years. The head of the district has administrative duties, including performance discussions, proposals for the use of branch offices and clinics, recommending the appointment of public legal aid attorneys. He/she is also responsible of

regional development within the district.

The Ministry of Justice is vested with the overall management and supervision of legal aid offices. **Public legal aid attorneys are nevertheless independent and only under the supervision of the Finnish Bar Association when providing legal aid.**

The state assumed responsibility for municipal legal aid offices five years ago, June 1998, when 160 municipal legal aid offices were closed over a three year period and the personnel became state employees. During the three-year transitional period legal aid offices moved into new premises with new computer equipment, and result-oriented management has been developed. Focus points during these years have been training and providing information about their activities.

2. Different legal aid schemes

Legal aid

By definition legal aid is the granting of state-funded assistance needed by people who are financially unable to meet the costs involved in a legal matter. Legal aid covers the fees of an attorney wholly or against deductible according the financial situation of the recipient of legal aid. The court charges and other similar payments as well as necessary costs of interpretation and translation are waived for a recipient of legal aid.

Legal aid generally covers all kinds of legal matters and all the needed actions, such as assistance in court proceedings in civil and criminal matters, assistance in proceedings at administrative courts, document drafting and advice.

Legal aid is given to any natural person who has to bring a case or is involved in a court case in Finland. In other matters legal aid is given to persons, who are resident in Finland. To other people legal aid is given for special reasons.

Legal aid is not given to companies or corporations. However, a private person pursuing a business may be given legal aid for a court case pertaining to the business; for other matters pertaining to a business, legal aid can be given only for special reasons.

Legal aid is not given, if the person has legal expenses insurance that covers the matter in question. Such insurance cover may be included e.g. in a household insurance policy, a labour union policy or a farming policy. Approximately 75 % of the population is covered by legal expenses insurance. However, legal aid can be granted so as to cover the excess on an insurance policy, provided that the applicant's income and assets are such that he or she would qualify for legal aid free of charge.

If the case is to be handled abroad, legal aid only covers general advice. However, the Ministry of Justice may grant more extensive legal aid if strong human interests are involved, such as child abduction or rape.

There are two other schemes, which are available regardless applicants financial situation.

Defence counsel

Since June 1998, there has been a provision of defence counsel for matters covered by the Criminal Procedure Act. The suspect of a criminal offence has the right to a defence counsel under certain circumstances for purposes of the pre-trial investigation and the trial.

A defense counsel will be appointed on request to a person suspected of aggravated offence (if a sentence of at least four months' imprisonment is prescribed for the offence) and to a person who is arrested or detained because of the offence.

A defense counsel is appointed by the court on its own initiative to a person who is under 18 years old, unless this is clearly unnecessary, or to a person who is incapable of seeing to his or her own defense.

The defense counsel will be appointed regardless of the financial circumstances of the person. The fee of the defender will be paid by the state. However, if the person is convicted of the offence, he or she must compensate the state for the defender's fee, unless his or her means qualify him or her for legal aid. The amount of the compensation is determined in accordance with the rules on legal aid.

The appointment as defense counsel can be given to a public legal aid attorney, an advocate or another lawyer. In most cases, the appointment is given to the lawyer suggested by the suspected or accused person. The fees and other expenses of defense counsel are paid by the state in accordance with the rules on legal aid.

Attorney or support person for a victim of crime

According to the Criminal Procedure Act the court may appoint an attorney or a support person for the victim of a sex offence for purposes of the pre-trial investigation and the trial. An attorney or a support person can be also appointed for the victim of a serious offence relating to violence, if this is justified taking into account the relationship between the suspect and the victim (usually domestic violence). If the victim wishes to make claims in the trial, the court will appoint an attorney. If the victim has no claims, a support person may be appointed.

The attorney and the support person may be appointed regardless of the income of the victim. Their fees and other expenses are paid by the state in accordance with the rules on legal aid.

3. Eligibility - Means-testing and contributions

Legal aid covers approximately 75 % of households in Finland.

Legal aid is granted on the basis of the applicant's income, expenses, possessions and maintenance liability. The legal aid office calculates the applicants **monthly available means**, as follows:

Income consists of wages, pension and per diems, as well as child allowances, maintenance support and capital income. Also the income of the spouse, domestic partner or registered partner of the applicant are taken into account, unless that person is the opposing party in the case at hand.

Taxes shall be **deducted** from the gross monthly income. When the total amount of housing costs, day-care charges, maintenance support payments and the scheduled payments in enforcement or debt adjustment proceedings exceeds EUR 250, the excess part of the total amount shall be deducted.

A deduction of EUR 250 shall be made for each child under the age of majority, 18 years.

If the applicant has **possessions** with a taxation value exceeding EUR 25 000 (entrepreneurs EUR 33 000), one percent of the excess part is added to the monthly income. Liabilities are deducted from assets. A permanent home and a car that is necessary to the work of the applicant are, however, omitted from the calculation. The bank deposits and other easily liquidated assets, if these exceed EUR 5,000 are not taken into calculation of monthly available means, but they increase the liability of the recipient of legal aid as described below.

When the monthly available means exceed EUR 1,400 for a single person and EUR 2,400 for spouses, legal aid will not be granted.

The contributions of recipient of legal aid

Legal aid can be free of charge or the recipient of legal aid may have to pay a percentage of the fee of the attorney (**basic deductible**). Whether he/she has to pay, and the percentage, depends on the monthly available means of the applicant as follows:

Single person		Spouses	
up to EUR 650	0%	up to EUR 1,100	0%
up to EUR 850	20%	up to EUR 1,300	20%
up to EUR 1,000	30%	up to EUR 1,600	30%
up to EUR 1,200	40%	up to EUR 2,000	40%
up to EUR 1,300	55%	up to EUR 2,200	55%
up to EUR 1,400	75%	up to EUR 2,400	75%

The bank deposits and other easily liquidated assets of the recipient of legal aid increase his or her liability, if these exceed EUR 5,000. This **supplementary deductible** is 50% of that part of his easily liquidated assets that exceed EUR 5,000. In addition, any easily liquidated assets received e.g. as an inheritance or in the distribution of matrimonial property are taken into account in the same manner.

There is also **a legal aid charge**, that amounts to EUR 35. It is collected from the recipient of legal aid whose monthly available means exceed EUR 500.

The state will not compensate the opposing party for any legal costs in the event that the recipient of legal aid loses the case. The court normally binds the loser of the case to pay the winner's legal costs. This risk of the legal costs of the opposing party may cause, that the recipient of legal aid not to take the matter to court.

4. Restrictions of legal aid

Legal aid is given in any sort of legal matter. However, the nature and importance of the matter have an effect on what services are covered by legal aid in any given case.

In **court cases**, people normally need the assistance of a legally qualified attorney. In the legal aid act there are three kinds of restrictions for legal aid at court:

1) In **simple criminal cases** sanctioned with a fine or other simple criminal cases such as drunken driving. However, an attorney is assigned if the interests of justice so require, for instance because of large claims for damages.

2) In **non-contentious civil cases**, unless there are particularly important reasons for doing so. No attorney is allowed for undisputed divorce, but if child custody, for example, is involved, an attorney may be assigned.

3) At the administrative courts, in cases involving **taxation or other public fees**, unless there are important reasons for appointing an attorney.

However the state legal aid offices offer advice and consultation even in these situations mentioned above, if needed.

The work of the attorney can be compensated for **a maximum of one hundred hours**. However, in court cases, the court may grant a dispensation from this limit for special reasons.

5. Providers of legal aid

Legal aid is provided by private lawyers and by public legal aid attorneys. **Private lawyers** are advocates or other private lawyers. An advocate is a lawyer who is a member of the Finnish Bar Association and whose activities are supervised by the Bar Association and the Chancellor of Justice. Other private lawyers are lawyers who are not under any public supervision. **Public legal aid attorney** is a lawyer working at a state legal aid office. The activities of public legal aid attorneys are supervised in the same manner as those of advocates. Half of public legal aid attorneys are members of the Bar.

In most cases, the applicants first contact with the lawyer of his/her choice, who then draws up the application for legal aid. The recipient of legal aid has **a choice of attorney in any court case**.

In **matters that are not to be brought before a court** (e.g. advice or drawing up of a document, such as an estate inventory or an agreed distribution of matrimonial property), legal aid is given only by **public legal aid attorneys**. In these situations the recipient of legal aid cannot choose a private lawyer, unless there is a special reason for it. The reason may be that the legal aid office has a conflict in the matter, too busy to take the client or the matter requires special knowledge that the public legal aid attorneys of the office do not have.

6. Fees for attorneys

In the Legal aid Act it is stated, that the attorney is entitled to reasonable fee for work and loss of time as well as compensation for essential costs. In clearly unfounded appeals the Court of Appeal may decide, that no fee is paid to the attorney.

More precisely the fees for the attorneys are defined in the Government decree on legal aid fee criteria and confirmed at the court in which the proceedings take place. Legal aid offices confirm fees for the matters they give legal aid, according to the same decree.

In the decree there are two fee structures in a District Court, for preparation and proceedings. Otherwise the fee is **EUR 84 per hour** based on time taken.

The fees for preparing for a trial are as follows: in a criminal matter EUR 252; in a matter pertaining to custody measures EUR 84; for the attorney of the plaintiff or of the petitioner in a civil matter or petitionary matter, EUR 505; for the attorney of the defendant or of the party to be heard in a civil matter or petitionary matter, EUR 420.

The fee for appearing as an attorney in an oral hearing of the matter is EUR 303, if the hearing and journey time is at most three hours. However, in the hearing of a matter pertaining to custody measures is EUR 168, if the hearing and journey time is at most two hours. If any above mentioned actions take clearly more time than given in options, the fee is EUR 84 per hour based on time taken.

There may be a max 20% **increment** in the fee of an attorney, in following situations:

- 1) if the assignment requires working outside normal working hours, work in a foreign language, exceptional circumstances or is particularly urgent.
- 2) if the assignment is exceptionally difficult requiring particular expertise, experience and professional skills
- 3) if the attorney has considerably greater responsibility than normal because of significant economic interest or because of cases of particular significance to the principal.

An overtime increment of 50 per cent is payable if pre-trial investigation or custody procedure entails assistance on a Saturday, Sunday or a public holiday.

The court may **reduce** fees, if the attorney has several similar cases, in which legal proceedings material is partly the same, or the cases are related, or if there is neglect or shortcomings by the attorney in dealing with the case.

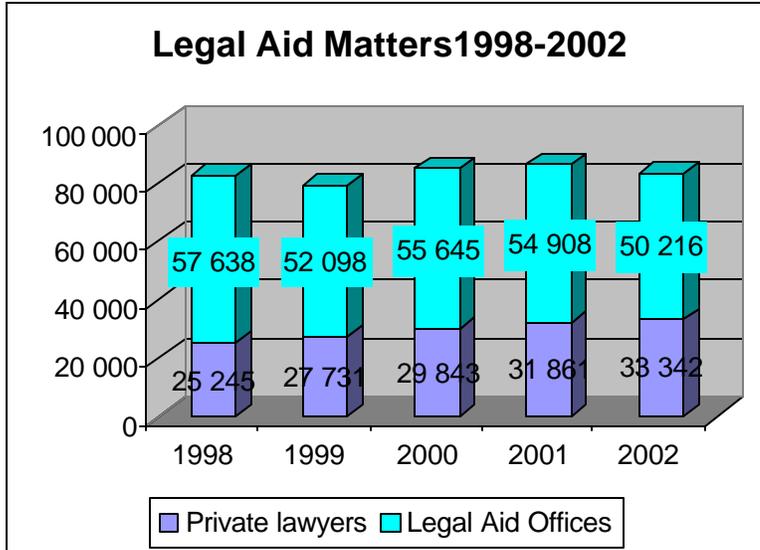
The overheads of legal work are included in the fee but compensation is paid for travel expenses, accommodation costs, higher than normal postal, telephone and copying charges and other direct costs.

Invoices must itemise daily actions and working hours, travel and waiting time, any grounds for increment, costs and value added tax.

7. Case numbers - and the balance between private lawyers and public legal aid attorneys

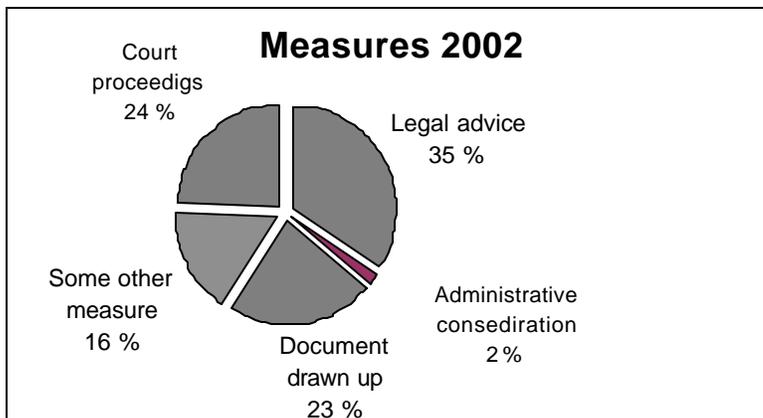
In the table bellow there are figures of legal aid matters per year during the years 1998 – 2002. The figures for legal aid matters dealt with by the private lawyers (including legal aid, defence counsel and a attorneys for victims of crime) and by the state legal aid offices are provided. The population of Finland is about 5 million.

Year	Private lawyers	Legal aid offices	Total
1998	25 245	57 638	82 883
1999	27 731	52 098	79 829
2000	29 843	55 645	85 488
2001	31 861	54 908	86 769
2002	33 342	50 216	83 558



The legal aid offices handled some 50,000 matters during year 2002. The total amount of matters dealt with is smaller than previously, due to training for legal aid reform and new tasks at legal aid offices during the year.

At legal aid offices, the actions taken in providing legal aid are broken down as follows: advice was given in about a third of the matters (35%), a document was drawn up or similar action taken in two matters of five (39%), and assistance was given in court in a quarter of cases (24%). These proportions are the same as in previous years.

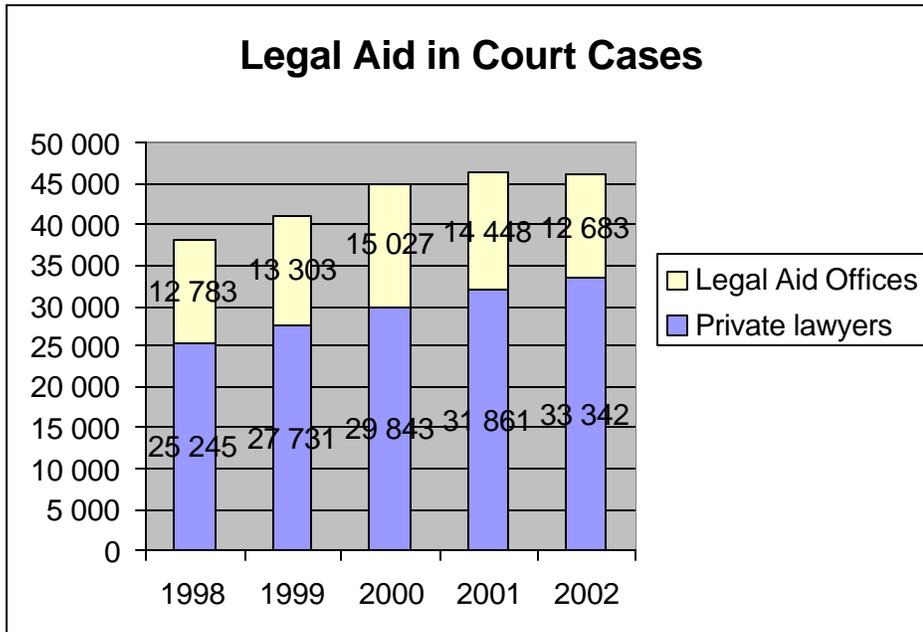


All services provided by private lawyers concern court cases.

Court cases

Bellow are **the figures** of legal aid in court cases during years 1998 – 2002:

Year	Private lawyers	Legal aid offices	Total
1998	25 245	12 783	38 028
1999	27 731	13 303	41 034
2000	29 843	15 027	44 870
2001	31 861	14 448	46 309
2002	33 342	12 683	46 025

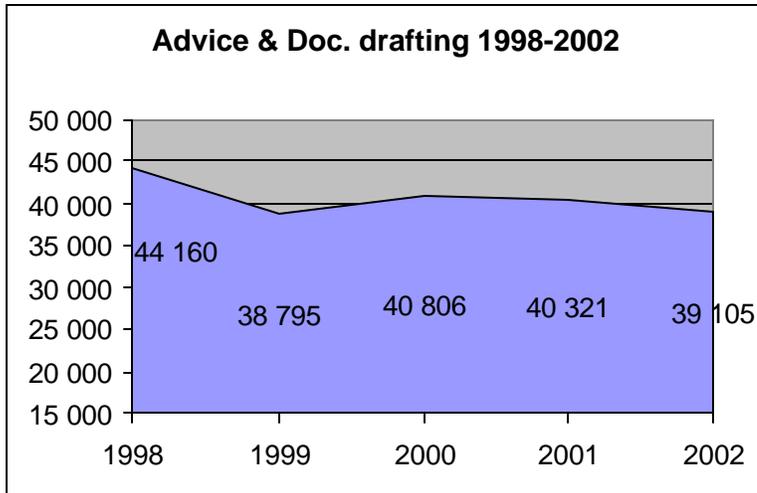


This table includes all the courts, that is the District Courts, Courts of Appeal, The Supreme Court, Administrative Courts and Insurance Court. Most matters (and costs) arise from matters in District Courts (about 80%).

Advise and document drafting

Legal aid in matters that are not handled at court (other than court cases) is provided by state legal aid offices. These include e.g. document drafting, negotiations, conciliation and advice. Below are the figures of these matters during years 1998 – 2002:

Year	Matters at legal aid offices
1998	44 160
1999	38 795
2000	40 806
2001	40 321
2002	39 105

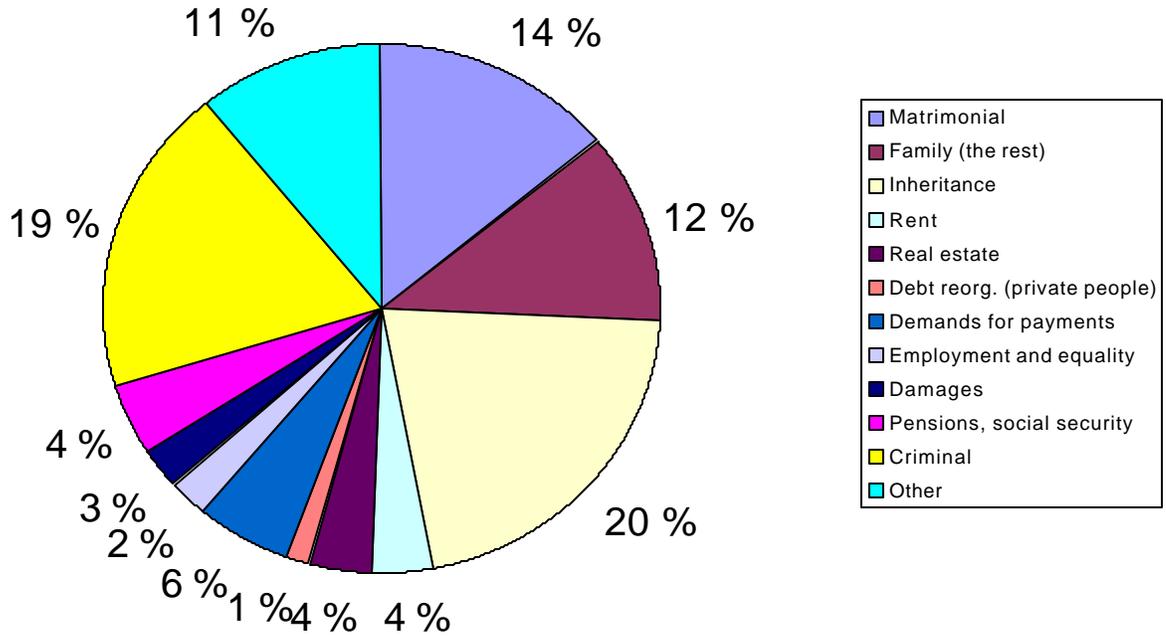


What kind of matters are dealt with by legal aid

Legal aid offices

In the year 2002 most of the matters at legal aid offices involved family law (26%) and the law of inheritance (20%). About a fifth (19%) were criminal cases. Other matters include demands for payments (6%), rent and other housing (4%), debt reorganisation (4%), pensions and social security (4%), damages (3%) and other matters (11%).

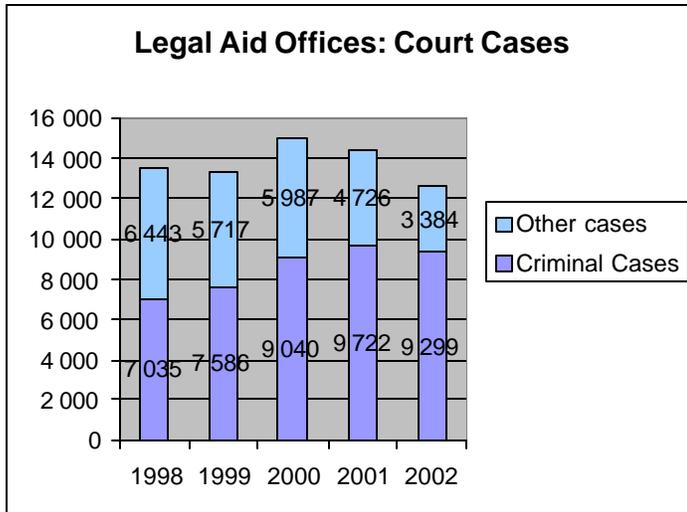
Matters submitted to the Legal Aid Offices in 2002



Bellow are figures **court cases** provided by legal aid offices during years 1998 – 2002:

Year	Criminal cases	Other cases at court	Total
1998	7 035	6 443	13 478
1999	7 586	5 717	13 303
2000	9 040	5 987	15 027
2001	9 722	4 726	14 448
2002	9 299	3 384	12 683

Of court cases, the criminal cases are the majority (74 %). Other court matters are mainly family law.



Private lawyers

Private lawyers only provide legal aid in court cases. Below are figures **court cases** provided **by private lawyers** during years 1998 – 2002:

Year	Criminal cases	Other cases
1998	18 338	5 292
1999	20 757	5 110
2000	22 764	5 105
2001	24 683	5 326
2002	25 354	5 103

Of these court cases provided by private lawyers, the vast majority (around 80%) are criminal cases, as inticated on the table above. Other matters are mainly family law.

8. The expenditure of legal aid - and the balance between private lawyers and legal aid offices

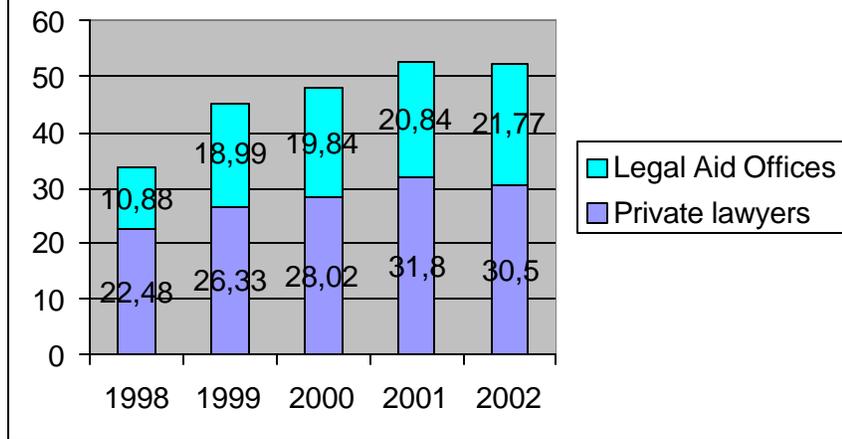
In the table below are listed the amounts paid from the state budget per year during the years 1998 – 2002. Besides the total amount spent on legal aid by the state there are the separated **the operating costs of the state legal aid offices** and the amounts paid to the **private lawyers** (including legal aid, defence counsel and attorneys for victims of crime). The proportion of the costs between private lawyers and legal aid offices are 3:2.

Year	Private lawyers	Legal aid offices	Total
1998	23 milj. €	11 milj.€	33 milj €
1999	26 milj. €	19 milj. €	45 milj. €
2000	28 milj. €	20 milj.€	48 milj. €
2001	32 milj. €	21 milj.€	53 milj. €
2002	31 milj. €	22 milj.€	52 milj. €

Between years 1990 – 2000 the expenses of private lawyers rose about 10 % per year.

During the year 2002 around 70 per cent of clients of the legal aid offices paid no contribution, 22 per cent paid compensation and 8 per cent paid full cost of the legal services they got. The last mentioned 8 % are not entitled to legal aid, but have for special reasons got service, usually advise, at legal aid office. These proportions have remained the same during last five years, but may now change in the future because of the changes made to the means tests in the year 2002. (see chapter 9)

Costs of Legal Aid (milj. €)



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9. A short description of the latest reform of legal aid

In Finland there have been reforms of legal aid in two stages: in 1998 municipal legal aid offices were transferred to the state. The second part came about four years later, in 2002. Below are listed the essential proposals for amendments, that came into force in June 2002:

- Acts on general legal aid and cost-free proceedings were replaced with a new Act on Public Legal Aid.
- Private lawyers can now also assist in special courts (insurance court)
- The access to public legal aid was expanded so that such aid is also available to persons with an average income against a certain excess. The system of public legal aid now covers approximately 75 % of all households, as compared with the approximately 44 % that were formerly entitled to such aid.
- A 100 h maximum per matter was enacted for public legal aid, with exceptions granted under certain circumstances.
- Legal expenses insurance was enacted as a primary instrument with regard to public legal aid. If the applicant has legal expenses insurance, he cannot get public legal aid. The exceptions are:
 - if the available funds entitle the applicant to free public legal aid, the amount of the aid can cover the excess part in the insurance
 - as the insurance terminates, the same special reasons shall apply as those regarding cases where the 100 h limit is exceeded (legal safety, type of matter)
- Legal aid offices have the right to check the information submitted by the person applying for public legal aid from the state or local government authority, Social Insurance Institution and Central Pension Security Institute, pension foundation, pension institution, insurance institution. They can also check the information from a Financial institution, if there is justified reason to doubt the sufficiency or reliability of the information. There is also a possibility to establish technical connections with the tax authorities and the Central Pension Security Institute.
- The person receiving public legal aid pays the excess directly to his attorney instead of the former practice in which the state first paid the remuneration and then collected the excess afterwards.
- Decisions on granting public legal aid are made in state legal aid offices. All rejected decisions, however, can be subjected to court discussion by submitting a decision request. (The request has to be in writing, and be submitted to the legal aid office rectification - within 30 days from the receiving notification /until a legally valid judgement. The applicant shall indicate the decision, the parts he is dissatisfied with, and the criteria for dissatisfaction. The legal aid office shall submit the decision request to the court that deals with the principal matter or administrative court.) The court dealing with the principal

matter decides on allocating a fee to a private attorney and on the amount of the excess to be paid by the person receiving public legal aid. In matters other than those dealt with in court, such decisions are made by the public legal aid attorney.

- The prosecutor's duty to react to the attorney's bill (to express his opinion and apply for change) has been emphasised.

The Code of Judicial procedure was also changed so that only a lawyer has the right to act as an advocate. There is an exception, that the party's spouse or close relative can appear on, matters concerning administrative law, and summary issues.

The total financial impact of the proposal is to increase expenditure of an estimated EUR 3.3 million.

Amendment to the decree on fee criteria,

- reducing the fees paid in matters that require coercive means
 - EUR 84 in preparing matters
 - EUR 168 in first hearing
 - EUR 84 in rehearings
- travel and waiting period fees EUR 67
- maximum travel time 3 h/day
- stricter rates to be applied to fees paid for preparations regarding district court proceedings
- hours to be rounded off to the nearest full hour

Came into force in June 2002. The cost cut-down target is EUR 1.6 million.

The Ministry of Justice has ordered an analysis on the reform from the National Research institute of Legal Policy. The project started at the beginning of this year and will last for two and a half years.