

# Main findings and opinions of the National Audit Office

## Public legal aid

The system of public legal aid has been subject to a number of reforms and change projects during the 2000s. In 2002, new groups were made eligible for legal aid. Since 2009 it has been possible to attend to legal aid matters by means of electronic services. Public guardianship services and legal aid for persons seeking international protection were transferred to public legal aid offices in 2009 and 2013, respectively. The implementation of the 2007–2011 government productivity programme and the cuts in the appropriations in the administrative branch of the Ministry of Justice and especially in the system of legal aid have led to the need to reduce the number of personnel and public legal aid offices and service points.

In 2010–2012, public legal aid expenditure totalled between 64 and 68 million euros. Public legal aid offices have accounted for about 27 million euros of this total each year, while between 36 and 41 million euros has been paid to private attorneys as compensation for providing public legal aid. Public legal aid offices have collected between 4.7 and 5 million euros in revenue from chargeable activities each year.

The focus in the audit was on two issues: 1) Has the Ministry of Justice managed and steered public legal aid in such a manner that public legal aid is properly available to those entitled to it; and 2) is public legal aid available when a person entitled to it needs it. As part of the main issues, the National Audit Office has examined the public legal aid provided by public legal aid offices from the perspective of public administration and organisation of the activities and from the clients' perspective. Public legal aid provided by private attorneys was left outside the scope of the audit.

## The aim of the Ministry of Justice has been to develop public legal aid services in accordance with needs

In recent years, the Ministry of Justice has made active efforts to respond to the need to develop public legal aid services, both from the perspective of central government finances and operational considerations. In the

view of the National Audit Office, the Ministry of Justice has, as a whole, taken a broad range of measures to ensure and promote the availability of public legal aid at public legal aid offices and the consideration of economic aspects.

Examples of how the Ministry of Justice has adjusted public legal aid services to tighter spending limits and the objectives of the productivity programme include the introduction of electronic services and electronic legal aid applications, introduction of joint service points and remote services on a trial basis and the development of the network of legal aid offices so that more time could be allocated for legal aid by reducing administrative work. By expanding advisory services, the ministry has reacted to the opinions on the Finnish system of public legal aid expressed in international evaluations. The aim has also been to provide legal aid at an early stage and at the right time before the disputes become deeper and the problems more difficult to solve and to minimise the costs arising from the management of the client's legal aid matters. An evaluation system is in use for assessing the quality of the public legal aid services. The purpose of the system is to ensure the availability of competent and high-quality legal aid services irrespective of whether they are provided by public legal aid offices or private attorneys.

Public legal aid offices provide public legal aid for all types of legal problems. So far, no problems have registered in the availability of legal aid as a result of the changes in the network of legal aid offices. In court proceedings those in need of legal aid also can turn to private attorneys. Long waiting times in a number of legal aid offices and lack of information on public legal aid services may make access to legal aid more difficult even though special arrangements are always made so that urgent matters can be dealt with.

## **Overall assessment of public legal aid services is urgently needed**

The Ministry of Justice has appointed a structural group for public legal aid offices. Its term of office has been extended to 31 March 2014. The task of the group is to examine the organisation and network of offices of the public legal aid services, personnel structure of the legal aid offices and cost and productivity effects. According to the statement on the draft audit report issued by the Ministry of Justice, the working group had not yet submitted its report. Now the report of the working group has been published on 21 May 2014. However, it was impossible to take account of the report in the revision of this audit report any more.

Audit observations indicate that the whole issue of public legal aid and its organisation should be reassessed and that the new assessment should be more extensive than the one carried out by the structural group. This viewpoint is supported by the development work of the public legal aid carried out by the Ministry of Justice and the studies conducted by the National Research Institute of Legal Policy. Their results concerning such matters as change trends in the legal aid provided by public legal aid offices and private attorneys already offer background material for the assessment. However, there should be additional material and a more in-depth analysis for use as a basis for the overall assessment. In its statement on the draft audit report, the Ministry of Justice noted that according to its performance target for 2014, an overall assessment of the current state of legal advisory services and legal aid and of the need for them up to the year 2025 will be carried out. In the view of the National Audit Office, a thorough overall assessment is needed and it should also include a reassessment of the organisation of public legal aid as a whole. In NAOF's opinion, the changes already made in public legal aid and legal advisory services make the reassessment and the overall evaluation more urgent.

### **Position of the legal aid directors should be strengthened**

The system of public legal aid consists of legal aid districts and legal aid offices located in the districts. Each legal aid district is headed by a legal aid director, while each legal aid office is headed by a leading public legal aid attorney. The legal aid director does not have any supervisory or other powers to intervene in the operations or management of the legal aid office. The organisation is lightweight and low-cost. From the perspective of the Ministry of Justice, the legal aid districts have functioned well as an instrument for steering legal aid services.

The main task of the legal aid director is to ensure equal access to legal aid services in the legal aid district. This means that the director must see to it that resources are evenly distributed within the district. The legal aid director sees to it that the district's performance targets are met and, as party to the performance negotiations concerning the district, the director is also liable for meeting the performance targets laid out in the performance agreement. These responsibilities also include tasks the management of which would require tools for steering legal aid offices and, if necessary, for intervening in their operations. There are currently no such tools. It is a question of supervisory issues and issues concerning the management of the offices, their operational practices, performance

and the meeting of the performance targets. The position of the legal aid director is based on discussions, agreeing and arbitration without the support of legal aid legislation and effective tools for problem situations.

There are considerable differences between the conditions and operating prerequisites under which legal aid offices provide public legal aid in the legal aid districts. Differences in conditions and operating prerequisites should be taken into account in the steering of legal aid services as uniform operating practices or development measures are not equally well-suited to all legal aid districts. Legal aid directors are close to the offices of their districts and they are the best experts in the operating environments of their districts and offices.

When the requirements for directing a legal aid office and performance targets for individual offices and legal aid attorneys are determined, stronger steering by the Ministry of Justice would better support legal aid directors in relation to the offices in the problems arising from the management of the work and achievement of the performance targets.

The National Audit Office is of the view that if the organisation of the public legal aid on the basis of legal aid districts will remain unchanged, the position and powers of the legal aid directors should be clarified. In any case, in the current situation, stronger steering by the Ministry of Justice would support the legal aid directors in their efforts to ensure equal access to legal aid services in the legal aid districts and the achievement of the districts' performance targets.

## **The office network has been developed without any overall plan**

During the last few years, the Ministry of Justice has developed the network of legal aid offices so that small legal aid offices have been administratively merged with larger ones. Despite the reduction in the number of offices, there has been practically no reduction in the number of public legal aid service points. In some of the service points, service is provided on the basis of advance appointments.

The office network has been developed on a gradual basis. The development of the network has not been based on a national or district-specific plan laying out the size of the network of offices and service points, regional distribution, size and personnel structure of the offices and service points or the content of the services provided at different offices and service points. Thus, the development has not been on the basis of an overall assessment of the need for or availability of legal aid services at national or district level and the principles and requirements

concerning the merging of the offices have not been laid out in a uniform manner. Moreover, there have been changes in the structures of the judicial administration and the tasks of the public legal aid offices. The relationship between the development of the office network and the reform of the district court network and the public guardianship tasks and their effects on the availability of legal aid services and the network of legal aid offices as a whole have remained open.

Most of the mergers of legal aid offices have taken place as leading public legal aid attorneys have retired or moved to other tasks. This has created a basis for acceptable personnel policy arrangements. However, this also means that the timing and implementation of the development of the office network and the merger of offices have not been on the basis of the legal aid operations and services and their availability.

It is not possible to reliably estimate on the basis of the audit material to what extent the legal aid attorneys have been able to direct their work input at legal aid work as a result of the merger of the offices and to what extent the changes have helped to improve productivity and reduce waiting times.

There has been a steady increase in the average waiting times at national level. In 2012, the average waiting time at national level was 14 days, whereas in 2008 it had been 11.5 days. The waiting times have not increased in the same manner in all legal aid districts. There are significant differences in waiting times between legal aid offices. In the examples discussed in the audit, mergers of legal aid offices seem to have shortened waiting times.

There are no reliable studies of the impacts of the changes in the office network on the availability of legal aid at public legal aid offices, on the content of the legal aid services or on the number of clients and cases at the offices. This is because there are many concurrent factors affecting the situation and it is difficult or impossible to determine the role of each of them. The small change in the number of service points does not give any reason to conclude that access to public legal aid at public legal aid offices has actually become more difficult.

In the long run, as the network of legal aid offices is developed and modernised, existing provisions concerning the disqualification of public legal aid attorneys may mean that court cases are increasingly becoming the responsibility of private attorneys. As the structures are updated, it should be ensured that as a result, disqualification matters do not prevent access to public legal aid from public legal aid offices.

The National Audit Office is of the view that the development of the public legal aid offices should have been based on an overall plan

concerning the size and regional distribution of the office and service point network, size and personnel structure of the offices and service points, and the content of the services available at different offices and service points. Such an overall view would also have been needed so that the changes in the structures of the judicial administration and the tasks of the legal aid offices and their effects on the availability of the services and the office network could have been considered.

### **Even though the advisory services reach the clients, the service entity may remain unclear to them**

The most common service offered by public legal aid offices is the provision of advice. During the past few years, it has accounted for about one third of all services. The advisory services provided by legal aid offices have been increased. This means that the clients' chances to get advice have improved as a result of the active development work carried out by the Ministry of Justice. Legal aid counselling and legal advice by telephone are available free of charge at all legal aid offices.

In the ensuring of the right timing of the legal aid services, emphasis has been on the quality of legal advice, conciliation with the help of the public legal aid attorneys in cases involving disagreements, and waiting times. Between 2010 and 2012, about five per cent of all disagreements ended in agreement.

It has not been possible to examine in the audit the clients' views on the advisory services and their availability. In the view of the representatives of the legal aid offices interviewed for the audit, the advice has, in accordance with the objectives set, helped to alleviate the situation of the clients and prevent problems from arising and from getting worse.

More advisory services are now also provided in the public administration. Public Service Info, the advisory service of the public administration, was launched at the end of 2013. Customer Service 2014, joint project by the Ministry of Finance and the municipalities, is making progress. It may be difficult for a client in need of legal aid advisory services to form the overall picture of the different advisory services referred to above and to understand the role of the advice provided by public legal aid offices as part of the system.

## Objectives set out for electronic services have been partially achieved

Most of the problems arising during the introduction and in the usability of the electronic services and the Romeo case management system were the result of insufficient testing, which meant that there was no time to correct all deficiencies before the actual introduction. The needs of all end users were not identified during the planning of the electronic services and Romeo and the end users were not included in the preparations at a sufficiently early stage.

The electronic application procedure and Romeo have, as laid out in the objectives, allowed the transfer of legal aid applications from busy legal aid offices to offices with a lighter workload and thus also the evening out of workloads between the offices. At least the offices that do not process legal aid applications are reasonably well placed to focus on legal aid tasks. Based on the audit material, it is not possible to detail to what extent this has happened. Electronic application procedure and Rome have facilitated and speeded up the processing of legal aid applications at legal aid offices.

The electronic services system and Romeo have at least to some extent facilitated the processing of legal aid matters in courts and speeded up the payment of compensations and fees to private attorneys.

Public legal aid clients have not used electronic services or completed electronic applications for legal aid. This is partially a result of the provisions contained in the Legal Aid Act and the application procedure for public legal aid and thus it is natural that the attorney completes the electronic application for legal aid with the assistance of the client. Even those clients that have been in direct contact with legal aid offices have only completed the electronic forms in exceptional cases. However, in such cases it has been necessary to correct the applications at legal aid offices. The objective under which the system should be easy to use has not become reality and the electronic services system has not facilitated the business of the clients as expected. Thus, from this perspective, it seems that the availability of public legal aid has not improved.

There is no single source providing information on how different legal aid offices process legal aid applications and how they make decisions concerning them. This is because no single party has been designated to monitor the processing of legal aid applications and the granting of legal aid in the electronic system or to coordinate it at national level.

The technical interface between legal aid offices and the data files of the tax authorities and the Social Insurance Institution permitted under the

Legal Aid Act, which would make it possible to check the information that the applicants have provided on their economic situation, has not yet become reality. Establishing the interface would speed up the procedure and make it easier to verify the information. The Ministry of Justice has started to prepare the matter. At the same time, however, the Ministry of Justice has not carried out any preparations or work concerning the decision on the use of the information contained in the system of licensed attorneys, introduced on 1 January 2013, in the electronic processing of legal aid applications or the attachment of the information contained in the system of licensed attorneys to the electronic legal aid system.

### **No decisions have been made on the use of the results of the quality assessment system**

As regards availability of public legal aid, it can be said that the quality assessment system supports access to competent and high-quality legal aid services provided by public legal aid offices and private attorneys. At the same time, the assessment system also supports the objectives concerning the societal effects of public legal aid.

The Ministry of Justice has not yet decided how the results of the quality assessment will be used. At the same time, no decision has been made on how the private attorneys that provide public legal aid at the expense of the state can be included in the quality assessment.

The Ministry of Justice and the other parties involved in the development of the assessment system have made a great deal of work to prepare and pilot the system. The National Audit Office has noted with satisfaction that the Ministry of Justice has drawn attention to the quality of the legal aid services provided with public funds. NAOF is, however, of the view that already before the decisions of the focusing of resources of such magnitude were made, it should also have been established more solidly than in general guidelines how the information generated by the system is used in the steering and development of the public legal aid system.

The Ministry of Justice has decided that only the average quality assessment results for each legal aid district are published. Legal aid directors or heads of legal aid offices cannot access the quality assessment results of the cases managed by individual legal aid attorneys. According to the National Audit Office, the information on the assessment of the quality of the cases managed by public legal aid attorneys obtained in this manner is important for the legal aid directors as they aim to ensure the equal distribution of resources in their districts and the achievement of the



performance targets. They are also important for the heads of the legal aid offices as they manage the operations of their offices. The information is an essential part of the performance appraisal interviews between heads of the offices and their subordinates and for this reason, too, they are needed by the heads of the offices. At the same time, they also help the employees when discussions are conducted and agreements made on their personal development plans.

### **Remote services and video conferencing are a useful way of improving access to public legal aid**

The experience in the use of video conferencing and remote services in the provision of legal aid services obtained in the SADe project were good. Even though there have been few cases in which legal aid cases have been managed between a legal aid attorney in the legal aid office and a client in a remote service point, remote and video links have proved workable tools in the management of legal aid matters. In situations involving interpretations, remote services have worked particularly well and sometimes the benefits have been greater than expected. Efficient use of time and the concentration on the interpretation situation have been among the positive results. Based on the experiences of the legal aid offices, remote services and video conferencing have also worked well from the clients' perspective.

Based on the audit findings, remote connections and the video conferencing option would, judging from the experiences gathered during the trial stage, serve as a useful tool for providing legal aid services so that equal access to legal aid can be ensured irrespective of the location of the legal aid offices. In order to familiarise clients with the option of remote connections and to ensure that they will become a real alternative to visits to legal aid offices, more experience in the use of remote services is needed and further development of remote services required.

The Ministry of Justice has announced that the use of remote services and video conferencing will continue and that legal aid offices are encouraged to take part in the remote service projects in municipalities. In its negotiations with the Ministry of Finance, the Ministry of Justice failed to obtain the required extra appropriations for purchasing video conferencing equipment and remote links to legal aid offices.

The government's Customer Service 2014 project should not result in any obstacles to the organisation and development of remote legal aid services.

## The focus between public legal aid offices and private attorneys is shifting

According to a survey carried out by the National Research Institute of Legal Policy, there was a change in 2012 in the compensation structure of the legal aid clients, compared with 2010 and 2011: The number and proportion of clients receiving legal aid free of charge or paying partial compensation have decreased. At the same time, however, the number and proportion of commercial clients (clients paying the full compensation) have increased even though the number of cases at legal aid offices has declined. However, according to the audit material, there has been little change in the accumulation of commercial revenue in recent years.

According to the National Research Institute of Legal Policy, the Helsinki district accounted for the largest number clients receiving the legal aid services free of charge, while the proportion of clients paying the full compensation was the highest in the district of Eastern Finland. There were few clients in the Helsinki region paying the full compensation, whereas in the districts of Eastern Finland and Rovaniemi one client in five paid the full compensation.

Managing the cases of clients paying the full compensation has been justified with the argument that this also helps to ensure public legal aid services for low-income clients in remote areas. In many cases, there are few private attorney services available in these regions. However, in the attorney survey conducted in 2012 by the Finnish Bar Association, 64 per cent of the members of the association's Kymi, Mikkeli and Eastern Finland chapter, and 61 per cent of the members of its Vaasa, Oulu and Lapland chapter considered public legal aid offices as their most important competitors even though legal aid cases accounted for only 17 and 22 per cent, respectively, of the total invoicing in these regions.

The proportion of legal aid cases assigned to private attorneys has grown during the past three years, while the number of cases at legal aid offices has declined during the past five years. According to the National Research Institute of Legal Policy, the proportion of clients in the legal aid cases assigned to private attorneys that receive the aid free of charge had increased from 2005 and stood at 89 per cent in 2012. On average, the clients of private attorneys are poorer than the clients of public legal aid offices. According to the National Research Institute of Legal Policy, these factors may shift the focus between public legal aid offices and private attorneys in court cases: Legal aid offices assign more and more cases to private attorneys and as the number of cases processed by legal

aid offices is declining, an increasing proportion of the demanding court cases is processed by private attorneys. At the same time, the number of commercial clients at legal aid offices is increasing, while at the same time, the proportion of clients of private attorneys receiving legal aid free of charge is also growing. This is in accordance with the audit findings, which indicated that the focus between public legal aid offices and private attorneys is shifting.

As a result of retirements and the lack of successors, availability of private attorney services is expected to decline, particularly in remote areas and in the areas of the chapter of Kymi, Mikkeli and Eastern Finland of the Finnish Bar Association. So far, the changes in the network of public legal aid offices have not had any effects on the work of attorneys' offices.

The National Audit Office is of the view that the Ministry of Justice should continue the examination of the changes in public legal aid and the reasons for them and to consider the findings of the reports in the overall assessment of the public legal aid.

## Recommendations of the National Audit Office

1. In the view of the National Audit Office, the Ministry of Justice should initiate the overall assessment of the public legal aid services and its organisation. In NAOF's opinion, the work should be included in the overall report, which according to the ministry's targets, is to start in 2014 and the purpose of which is to prepare an overall report on the current state of legal advisory services and legal aid and the need for them up to the year 2025. Development of the office network and the organisational structure, disqualification issues, expansion of the legal aid advisory services and public administration general advisory services and the introduction of remote services at public legal aid offices on the one hand and the increasing proportion of commercial clients and the strengthening of the role of private attorneys on the other should be considered as a single entity. Its elements are dependent on each other and also have an effect on the availability of legal aid at legal aid offices. As a background to this overall assessment, examination of the factors behind the growth in the number of commercial clients and the changes in the role of the private attorneys should continue, while their effects and the effects of the changes in legal expenses insurance policies and the granting of such policies on public legal aid services should be assessed.

2. If the organisation of the public legal aid on the basis of legal aid districts will remain unchanged, the status and powers of the legal aid directors should be clarified. If no changes are made to the current system, the Ministry of Justice should also strengthen its steering by supporting the work of the legal aid directors.
3. As a basis for the development of the network of public legal aid offices, the Ministry of Justice should draw up a comprehensive plan concerning the size and regional distribution of the office and service point network, size and personnel structure of the offices and service points, and the content of the services available at different offices and service points. The plan could be made part of the reassessment of the public legal aid services discussed in section 1.
4. The Ministry of Justice should continue the development of electronic services so that the system can be made easier to use and understand from the clients' perspective and that it could have more uses in the work of the attorneys and in the judicial administration. At the same time, the Ministry of Justice should consider the organisation of the national monitoring and coordination of the electronic processing of legal aid applications and electronic granting of legal aid.
5. The Ministry of Justice should continue the work to implement the technical interfaces of the information systems of the Finnish Tax Administration and the Social Insurance Institution and to ensure that the information contained in the system of licensed attorneys that was introduced on 1 January 2013 can be used in the electronic processing of legal aid or to ensure that the information is made part of the electronic system.
6. The Ministry of Justice should, as soon as possible, decide how the information produced as part of the public legal aid quality assessment system can be used in the steering and development of the public legal aid services and how private attorneys are obliged to take part in the quality assessment. The Ministry of Justice should also reconsider the provision under which legal aid directors and the heads of the legal aid offices are denied access to the information on the assessment of the quality of the matters carried out by the public legal aid attorneys.
7. The Ministry of Justice should continue the work to introduce remote services and video conferencing facilities at public legal aid offices so that access to legal aid can be ensured irrespective of the location of the legal aid offices.