

# LEGAL AID ACT

(257/2002; OIKEUSAPULAKI)

NB: UNOFFICIAL TRANSLATION © MINISTRY OF JUSTICE, FINLAND, 2002

## Chapter 1 — **Legal aid**

### Section 1 — *Legal aid: general principle and coverage*

- (1) Legal aid shall be given at the expense of the state to a person who needs expert assistance in a legal matter and who for lack of means cannot self pay the expenses of having the matter dealt with.
- (2) Legal aid covers the provision of legal advice, the necessary measures and representation before a court of law and another authority, and the waiver of certain expenses of the consideration of the matter, as provided in this Act.

### Section 2 — *Persons entitled to legal aid*

- (1) Legal aid shall be given to persons resident in Finland, as well as to citizens of a member state of the European Union or the European Economic Area who are working or seeking work in Finland, as required by the Regulation on freedom of movement for workers within the Community (EEC) No 1612/68 and the Agreement on the European Economic Area.
- (2) In addition, legal aid shall be given irrespective of the criteria provided in paragraph (1), if the person has a matter to be heard by a Finnish court of law or if there otherwise is a special reason for legal aid to be given. Legal advice, as a part of legal aid, shall be provided irrespective of the criteria provided in paragraph (1) under the conditions laid down in the Convention on International Access to Justice (TrS 47/1988)
- (3) Legal aid shall not be given to a company or a corporation. Legal aid shall be given in a business matter, other than a court case, of a person pursuing a business only if there is a special reason for the same, taking due note of the nature and extent of the business operations, the financial and personal situation of the person and the circumstances as a whole.

### Section 3 — *Means-testing*

- (1) Legal aid shall be given, on application, for free or against a deductible, on the basis of the means of the applicant. The means of the applicant shall be tested by making a calculation of the funds available to him or her per month (*available means*). The calculation shall be based on the monthly income, necessary expenses, wealth and maintenance liability of the applicant, his or her spouse, or his or her domestic partner.
- (2) Legal aid shall be given to a person whose available means do not exceed an amount determined by a Decree of the Government. More detailed provisions on the income and expenses to be taken into account and on the effect of wealth and maintenance liability to the available means shall be issued by a Decree of the Government, as shall provisions on the basis for the determination of the deductible of a person receiving legal aid. No deductible shall apply to minor legal advice.
- (3) Legal aid shall not be given if the applicant has legal expenses insurance that covers the issue at hand. However, in a matter before a court of law, legal aid may be granted in so far as the costs exceed the maximum cover stated in the insurance policy, provided that there are special reasons for the same, taking into account the person's need for access to justice and the nature and extent of the matter. A maximum shall be set in the legal aid decision for the billable hours of the attorney. If, however, the means of the applicant are such that he or she is entitled to legal

aid for free, legal aid may be granted also to cover the deductible stated in the insurance policy.

#### Section 4 — *Benefits of legal aid*

- (1) The granting of legal aid shall release the recipient from liability for:
  - (1) the fees and reimbursements for an attorney appointed or approved under this Act, in full or in part, as stated in the legal aid decision;
  - (2) the fees and reimbursements arising from the interpretation and translation services required in the consideration of the matter; and
  - (3) handling charges, document charges and the reimbursement of miscellaneous expenses in the authority seised of the main matter; the said charges shall likewise not be collected by other authorities for their measures and documents in so far as necessary for the matter being dealt with.
- (2) The compensation for witnesses called by a party receiving legal aid shall be paid from state funds. The other costs of evidence submitted by a party receiving legal aid shall be paid from state funds if the evidence has been necessary for the resolution of the matter.
- (3) If a party receiving legal aid, other than the defendant in a criminal matter, has been summoned to the court in person in order to resolve the matter, the compensation for the costs of coming to court shall be paid from state funds.
- (4) Moreover, the granting of legal aid shall release the recipient from liability for the enforcement charge pertaining to the judgement or the court order and from the expenses payable in advance. All necessary costs of enforcement shall be covered from state funds, if they cannot be collected from the opposing party. However, the provision in this paragraph does not apply to renewed enforcement proceedings in so far as the earlier enforcement attempt has failed because of the lack of means of the debtor.

#### Section 5 — *Measures of an attorney covered by legal aid*

- (1) In a given matter, legal aid shall cover those measures of an attorney that are necessary in view of the nature and extent of the matter, the value of the object of the dispute and the circumstances as a whole. Legal aid may be limited to predetermined measures only. A determination of this sort may be extended later, if there is need for the same.
- (2) Legal aid shall cover the measures of the attorney for at most one hundred hours. However, the court seised of the matter may decide that legal aid is to continue, if there are special reasons for the same in view of the person's need for access to justice and the nature and extent of the case. In this event, the court shall set a maximum for the billable hours of the attorney.
- (3) Section 23 applies to legal aid in matters to be considered abroad.

#### Section 6 — *Coverage of legal aid in certain cases*

- (1) An applicant who is deemed not to need an attorney, but whose means would entitle him or her to legal aid for free, may be given the benefits referred to in section 4(1)(2), 4(1)(3) and 4(2)—4(4) by way of legal aid.
- (2) Legal aid shall not cover an attorney's services:
  - (1) in a petitionary matter before a general court of law, unless there are especially weighty reasons for the same;
  - (2) in a simple criminal case, where the prevailing penal practice indicates that the foreseeable penalty will not be more severe than a fine or where, in view of the foreseeable penalty and the results of the investigation of the matter, the access of the defendant to justice does not require an attorney;
  - (3) in a matter of taxation or a public charge, unless there are especially weighty reasons for the same; nor

- (4) in a matter where the person's standing to request a rectification or to appeal is based on membership of a municipality or another public corporation.
- (3) However, if necessary in a matter referred to in paragraph (2), a public legal aid attorney may provide legal advice and draw up any required documents.

#### Section 7 — *Restrictions to legal aid*

Legal aid shall not be given if:

- (1) the matter is of little importance to the applicant;
- (2) it would be clearly pointless in proportion to the benefit that would ensue to the applicant;
- (3) the pursuit of the matter would constitute an abuse of process; or
- (4) the matter is based on an assigned right and there is reason to believe that the purpose of the assignment was the obtainment of legal aid.

#### Section 8 — *Attorney*

- (1) Legal aid shall be given by public legal aid attorneys. However, in matters to be heard by a court of law, also a private attorney who has consented to the task may be appointed as an attorney. In addition, a private attorney may be appointed in events referred to in section 10 of the Act on State Legal Aid Offices (258/2002; *laki valtion oikeusaputoimistoista*).
- (2) An appointment as a private attorney may only be given to an advocate or to another person eligible to serve as an attorney under chapter 15, section 2(1), of the Code of Judicial Procedure (*oikeudenkäymiskaari*). Appointment as an attorney for a suspect in a criminal case may only be given to a public legal aid attorney or an advocate, or for a special reason also to another person who holds the degree of Master of Laws, if the suspect has been arrested or detained, if the suspect is charged with an offence with no statutory penalty less severe than imprisonment for four months or with an attempt of or participation in such an offence, or if the suspect is younger than 18 years of age.
- (3) Where the person receiving legal aid has self nominated an eligible person as his or her attorney, that person shall be appointed unless there are special reasons to the contrary.
- (4) In his or her task, the attorney shall adhere to proper conduct as advocate.

#### Section 9 — *Replacement of the attorney*

- (1) In a matter heard by a court of law, an attorney shall not send a replacement without the permission of the court. The replacement shall be eligible as an attorney in his or her own right.
- (2) In a matter being heard by a court, the court, and in another matter, the legal aid office, may, on the reasoned request of the person receiving legal aid or of the attorney, or for a valid reason also on its own motion, revoke the appointment of the attorney and appoint a replacement.

## Chapter 2 — **Legal aid decision**

#### Section 10 — *Application for legal aid*

- (1) Legal aid shall be applied for from the legal aid office. The application can be made at any stage of the proceedings, up to the time when the court decision on the matter has become *res judicata* or the consideration of the matter has otherwise been concluded. The application may be made orally or in writing. The applicant shall supply information on his or her means and on the matter for which legal aid is being applied for. More detailed provisions on the information to be supplied on the means and the matter shall be issued by a Decree of the Ministry of Justice.
- (2) A state authority and a municipal authority, the Social Insurance Institution, the Central Pension Security Institute, a pension fund and another pension institution,

as well as an insurance institution, shall, on demand and notwithstanding any provisions on secrecy, supply the legal aid office with the information in its possession that is necessary for the performance of the statutory duties of the office, so as to determine whether the means of the applicant are such that he or she is entitled to legal aid and whether he or she has legal expenses insurance that covers the issue at hand. The same obligation shall apply also to a banking institution, if the legal aid office cannot obtain adequate information from the parties referred to above, and if there is justified reason to doubt the adequacy or the reliability of the information supplied by the applicant. The demand shall be given to the banking institution in writing; the applicant shall be given an advance notice of the demand.

- (3) On the conditions referred to in paragraph (2), the legal aid office may access, by way of a technical interface, the secret personal data in the data files of the tax authorities and the Social Insurance Institution, so as to verify the information supplied by the applicant on his or her means. The legal aid office shall give an advance notice to the applicant of this possibility.

#### Section 11 — *Granting of legal aid*

- (1) The legal aid office shall decide on the granting of legal aid, unless otherwise provided in another Act. If a public legal aid attorney is disqualified from the main matter, the applicant shall be advised to make the application to another legal aid office. However, on the request of the applicant, the decision may be made in the legal aid office in question, provided that the circumstances do not require that the matter be transferred. A public legal aid attorney assisting the opposing party shall, however, not make the decision on the application for legal aid. The decision may be sent to the applicant by post. In the absence of evidence to the contrary, the decision shall be deemed to have been served on the applicant on the seventh day after the posting of the document to the address supplied by the applicant.
- (2) If legal aid has not been granted as applied, the applicant may submit the question of legal aid to a court of law for a decision, as provided in section 24.

#### Section 12 — *Legal aid charge*

- (1) The legal aid office shall collect a legal aid charge when it grants legal aid or forwards a submission referred to in section 11(2) to the court for a decision. The amount of the charge shall be laid down by a Decree of the Government.
- (2) There shall be no charge when legal aid is granted for the provision of minor advice. Provisions may be issued by a Decree of the Government on the waiver of the charge for lack of means.

#### Section 13 — *Commencement and duration of legal aid*

- (1) Legal aid may be granted from the date of application or, if the relevant criteria are met, also retroactively to cover the necessary measures already undertaken in the matter. Legal aid shall be in effect at all levels of the court hierarchy seised of the matter.
- (2) In a matter before an appellate court, legal aid shall not be granted retroactively to cover the measures preceding the appeal, unless the applicant establishes the probability that he or she has had a valid reason for not applying for legal aid at an earlier stage.
- (3) Legal aid granted in a matter before an administrative court shall not cover the measures in the earlier administrative proceedings or the tribunal referred to in section 1(2) of the Act on Administrative Judicial Proceedings (586/1996; *hallintolainkäyttölaki*); legal aid granted in the Insurance Court shall not cover the measures in the preceding proceedings. If the court remands the matter to the administrative authority or the tribunal referred to above, the appointment of a private attorney shall remain in effect also there, if the remanding court so orders.

- (4) When a court transfers a criminal matter to another court by virtue of chapter 4, section 8 or 9, of the Criminal Procedure Act (689/1997; *laki oikeudenkäynnistä rikosasioissa*) or when a higher court transfers the matter to a lower court not earlier seised of the matter, by virtue of section 10 of the said chapter, the appointment of the attorney in the matter shall remain in effect, unless the transferring court orders otherwise.

Section 14 — *Contents of the legal aid decision*

The legal aid decision shall be issued in writing. It shall contain the following information:

- (1) the matter for which legal aid is granted;
- (2) the means of the applicant;
- (3) the date as of which legal aid is granted;
- (4) the benefits deriving from legal aid;
- (5) the possible deductible of the recipient of legal aid; and
- (6) the name of the attorney.

Section 15 — *Change of financial circumstances*

While a commission is in effect, the recipient of legal aid shall notify the legal aid office of changes in his or her financial circumstances. The attorney shall remind the client of the said obligation in the event of a change in the financial circumstances of the client.

Section 16 — *Amendment of the legal aid decision and cessation of legal aid*

- (1) If the criteria for legal aid have not in fact been met, or if the circumstances have changed or ceased, the legal aid office may amend the legal aid decision or decide that legal aid is to cease. The applicant may submit the question of amending the legal aid decision and the cessation of legal aid to be decided by a court of law, as provided in section 24.
- (2) The court seised of the main matter may always, on the conditions referred to in paragraph (1), amend the legal aid decision or order that legal aid is to cease.
- (3) When the deductible of the recipient of legal aid is amended, a decision shall be made as to whether the amendment is to apply retroactively. When the cessation of legal aid is decided, a decision shall be made as to whether the recipient is to compensate the state for legal aid rendered, and the amount of the compensation determined.
- (4) A public legal aid attorney may carry out a commission even if the recipient is no longer entitled to legal aid owing to a change of financial circumstances or changes in the matter at hand. This service by the legal aid office shall be subject to a full charge.

## Chapter 3 — **Compensation**

Section 17 — *Fee and expenses of a private attorney*

- (1) A reasonable fee for the necessary measures and for time spent shall be determined for a private attorney, as shall compensation for his or her expenses. The fee and the expenses shall be paid from state funds, less the deductible provided in section 20. For the fee to be determined, the attorney shall produce the legal aid decision and a detailed account of his or her measures in the matter and of his or her expenses. In criminal matters, the public prosecutor shall comment on the requested fee and expenses, if this is necessary in view of the amounts requested or for some other reason. If the appointment as attorney has been given to a person who does not normally pursue cases before the court in question, the extra travel expenses and time spent shall be compensated only if the use of such an attorney

can be justified. More detailed provisions on the bases for the fees and expenses of attorneys shall be issued by a Decree of the Government.

- (2) In so far as legal aid is being given on the basis of this Act, the attorney shall not collect any fees or expenses, except for the deductible, from the recipient of legal aid. An agreement to the contrary shall be void.
- (3) If the attorney has been permitted to be replaced by another person, the fee and expenses arising from the measures undertaken by the replacement may be separately determined as payable to the replacement.
- (4) An appellate court may decide that the fee and expenses of the attorney are not to be paid from state funds, if the appeal is clearly ill-founded.

#### Section 18 — *Determination of fees and expenses*

- (1) In a case heard by a court, the court seized of the main matter shall determine the fees and expenses payable from state funds to a private attorney, a witness and an interpreter, as well as the compensation payable to a recipient of legal aid.
- (2) The fee and expenses of an attorney shall be determined by the court when the tasks of the attorney before that court are concluded. If legal aid is granted retroactively to cover measures before a lower court only after the proceedings before that court have been concluded, the appellate court shall determine the fee and expenses of the attorney also for the measures undertaken before the lower court. However, if the appeal is not pursued to the end, the fee and the expenses shall be determined by the court last seized of the case. If the task is to continue for a longer period, the fee and the expenses may be determined on a semi-annual basis or, for a special reason, also on the basis of shorter periods. An attorney may be paid an advance for the considerable expenses foreseen in the performance of his or her task, if there is a special reason for the same.
- (3) The provisions on the compensation payable to witnesses from state funds shall govern the determination of the compensation to a witness and a recipient of legal aid, the payment of such expenses and other costs of evidence, and appeals against an order on the amount of the compensation.
- (4) In cases that he or she has prosecuted, the public prosecutor has standing to appeal against orders on the amount of the fee and expenses of an attorney.
- (5) In cases not heard by a court, the legal aid office shall determine the fee and expenses of an attorney and an interpreter.

#### Section 19 — *Compensation of the costs of evidence in certain cases*

If the hearing of a witness called by the recipient of legal aid has been clearly unnecessary, the recipient may be obligated to reimburse the state for the compensation ordered to be paid to that witness.

#### Section 20 — *Determination of the deductible*

- (1) The amount of the deductible shall be calculated from the determined attorney's fee and expenses, inclusive of VAT. If the deductible set at the granting of legal aid would thereby be clearly unreasonable in view of the means of the recipient, the deductible may be limited. The deductible shall be calculated on a case-by-case basis. An advance towards the deductible or a part thereof may be collected.
- (2) When a private attorney has given legal aid against partial compensation in a case heard by a court, the court referred to in section 18(2) shall, after having reserved the recipient of legal aid an opportunity to comment on the correctness of the bill, order the recipient of legal aid to pay the deductible to the attorney at the same time as it determines the attorney's fee paid from state funds. In other events, the legal aid office shall determine the amount of the deductible.
- (3) The deductible ordered to be paid to a private attorney shall on demand be ordered to bear overdue interest, at the rate referred to in section 4(3) of the Interest Act (633/1982; *korkolaki*) as from one month after the date of the order.

Section 21 — *Collection of the compensation in enforcement proceedings and overdue interest*

- (1) On the basis of the decision of the legal aid office, the deductible to the state, the expenses paid from state funds on behalf of the recipient of legal aid but not covered by legal aid, and the legal aid charge may be collected from the recipient without a judgment or order in accordance with the provisions of the Act on the Enforced Collection of Taxes and Charges (367/1961; *laki verojen ja maksujen perimisestä ulosottoihin*). Before collection measures are undertaken, the legal aid office shall reserve the person liable an opportunity to be heard.
- (2) If the deductible or the legal aid charge to the state has not been paid on the due date, the overdue amount shall bear interest at the rate referred to in section 4(3) of the Interest Act as from one month after the date when the relevant court order has been available to the person liable or when a bill has been sent to the person liable.

Section 22 — *Liability of the opposing party to pay compensation*

- (1) If the party opposing the recipient of legal aid is liable to compensate in full or in part the recipient's legal costs by virtue of chapter 21 of the Code of Judicial Procedure, chapter 9 of the Criminal Procedure Act or chapter 13 of the Act on Administrative Judicial Proceedings, that party shall likewise be ordered to compensate the state for the expenses paid from state funds on the basis of this Act and for the estimated fee of the public legal aid attorney; the amounts shall bear overdue interest, at the rate referred to in section 4(3) of the Interest Act as from one month from the date when the relevant court order has been available to the person liable.
- (2) If legal aid has been granted retroactively to cover expenses that the party opposing the recipient of legal aid has been ordered by a *res judicata* order of the lower court to pay to the recipient as legal costs, the right to the compensation shall revert to the state up to the amount paid from state funds.
- (3) A public legal aid attorney shall produce an account of the measures undertaken and the expenses incurred in the case.

Section 23 — *Legal aid in a case considered abroad*

- (1) In cases considered abroad, legal aid shall cover the provision of general legal advice.
- (2) For very weighty reasons, the Ministry of Justice may grant more extensive legal aid for a case to be considered abroad. In such cases, the Ministry of Justice shall determine the necessary fees and expenses to be paid from state funds.
- (3) Provisions may be issued by a Decree of the Ministry of Justice on the maximum legal aid to be given abroad and on the filing and contents of an application for legal aid in a case considered abroad.

## Chapter 4 — **Appeals**

Section 24 — *Submission of the decision of the legal aid office to a court for a hearing*

- (1) A decision made on the basis of this Act by a legal aid office may be submitted to the court for a hearing (*submission*). The submission shall be made within 30 days of the service of the decision of the legal aid office. However, in a case heard by a court, the submission may be made at any time until the decision in the main matter becomes *res judicata*. The submission shall be filed with the legal aid office that made the decision. It shall be filed in writing and it shall mention the decision that the submission concerns, as well as state how and on what basis the applicant is discontent with the decision.
- (2) The legal aid office shall without delay forward the submission to the court seised of the main matter or the court with jurisdiction over the main matter. If the hearing of the main matter in the court has been concluded and the statutory appeal period

has not yet ended, the submission shall be forwarded to the court last seised of the case. If the legal aid decision pertains to a matter that cannot be brought to court, or a matter where the avenue of appeal is directly to the Supreme Administrative Court, the submission shall be forwarded to the Administrative Court in whose jurisdiction the legal aid office that made the decision is located. The court to which the legal aid office forwards the submission shall have jurisdiction over it.

- (3) The decisions of the legal aid office based on this Act shall not be open to appeal, unless so provided in another Act.

#### Section 25 — *Self-rectification by the legal aid office*

- (1) The legal aid office may self-rectify its decision, if a submission referred to in section 24 shows cause for the same.
- (2) The decision to self-rectify shall at once be notified to the applicant who filed the submission. The decision may be delivered to the applicant in the manner referred to in section 11(1).

#### Section 26 — *Appeal*

- (1) A decision made on the basis of this Act by a court shall be open to appeal in conjunction with an appeal in the main matter or, if the decision has been made before the main matter is decided, separately in accordance with the provisions on appeals in the main matter.
- (2) If the order of the Administrative Court pertains to the granting of legal aid in a matter that cannot be brought to court, or a matter where the avenue of appeal is directly to the Supreme Administrative Court, the order shall be open to appeal only by the leave of the Supreme Administrative Court. Leave to appeal may be granted on the basis of:
  - (1) the importance of a ruling by the Supreme Administrative Court to the application of the law in other similar matters or because of the coherence of case-law;
  - (2) there being a special reason for this because of a clear error that has been made in the matter; or
  - (3) there being another important economic or other reason for granting leave to appeal.

#### Section 27 — *Court proceedings*

- (1) A matter of the granting, amending or ceasing of legal aid that is to be heard by the court separately from the main matter shall be heard urgently. In a District Court, a legal aid matter heard separately from the main matter shall be heard, in so far as appropriate, as provided for proceedings in petitionary matters; in an Administrative Court and in the Insurance Court the matter shall be heard, in so far as appropriate, as provided in the Act on Administrative Judicial Proceedings.
- (2) The District Court, Administrative Court and Insurance Court shall have a quorate composition for purposes of legal aid matters also with one legally qualified member present. If the applicant is not present when the decision is to be made, and appeal is dependent on a declaration of discontent, the date of the decision shall be notified to the applicant in writing well in advance of the decision being handed down in the event that the matter is not decided as applied for.

## Chapter 5 — **Miscellaneous provisions**

#### Section 28 — *Measures when an application for legal aid is rejected*

If the legal aid office has rejected an application for legal aid and the decision has been submitted to the court, a public legal aid attorney shall on the request of the applicant undertake the measures necessary for the safeguarding of the rights of the applicant until such time that the matter is decided by the court. If the court

upholds the decision of the legal aid office, the applicant shall be charged for the measures thus undertaken. An advance against the charge or a part thereof may be collected.

Section 29 — *Detailed provisions*

More detailed provisions on the implementation of this Act shall be issued by a Decree of the Ministry of Justice.

Section 30 — *Entry into force*

- (1) This Act enters into force on 1 June 2002.
- (2) This Act repeals the Act on Cost-Free Legal Proceedings of 2 February 1973 (87/1973; *laki maksuttomasta oikeudenkäynnistä*) as amended, and the Public Legal Aid Act of 6 February 1998 (104/1998; *laki yleisestä oikeusavusta*).
- (3) Measures necessary for the implementation of this Act may be undertaken before its entry into force.

Section 31 — *Transitional provisions*

- (1) In the event of references in other legislation to the Act on Cost-Free Legal Proceedings or the Public Legal Aid Act, the provisions of this Act apply, in so far as appropriate, instead of the same.
- (2) In a case where cost-free legal proceedings have been granted before the entry into force of this Act, the preceding provisions in force continue to apply.
- (3) In a case where public legal aid has been granted before the entry into force of this Act, the preceding provisions in force continue to apply.