

Pro Bono Practices and Opportunities in Finland

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

September 2010

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When Finland declared independence in 1917, the new state had a long history of Swedish rule (from the 12th century until 1809) and of being an autonomous Grand Duchy of the Russian Empire (from 1809 until 1917). Their common history with Sweden is the basis of the similarities between the Finnish and Swedish societies – similarities that can be seen in the culture as well as in political and legal structures.

I. *Legal Services and the Legal Profession in Finland*

By contrast to most legal systems in the European Union, a party to a court proceeding in Finland has no obligation to employ an advocate, and may be represented by another person with a Master's degree in law or, in certain cases, any person who is honest and otherwise suitable and competent.¹ Nevertheless, in most cases, trained legal specialists are employed.

Under Section 5 of the Advocates Act (*Laki asianajajista / Lag om advokater*, 1958/496), an advocate shall conscientiously fulfill the tasks entrusted to him and observe the Rules of Proper Professional Conduct for Advocates (*Hyvää asianajajatapaa koskevat ohjeet / Vägledande regler om god advokatsed*). The requirements of proper professional conduct are defined in the Advocates Act, various statutes and, above all, by the governing and executive bodies of the Finnish Bar Association. In practice, many disciplinary decisions taken by the Board of the Finnish Bar Association are reflected in the Rules of Proper Professional Conduct for Advocates, which have become very important guidelines for practicing advocates.

An advocate's fee for each mandate is determined by the amount and type of work required. The degree of difficulty of the mandate and the interest involved are also relevant.² When called for by social circumstances, services may be provided for a reduced fee or free of charge.³ Disadvantaged citizens may also be granted legal aid, whereby expenses are covered by public funds (see section below).

Arrangements in which the advocate's fee is a share of whatever may be recovered (*pactum de quota litis*) or is charged only if a certain, pre-defined end result is achieved (*pactum de palmario*) are allowed under special circumstances.⁴ However, it follows from the Code of Conduct for Lawyers in the European Union (CCBE) that *pactum quota litis* may not be applied when an assignment involves cross-border activities of a Finnish lawyer in other Member States of the European Union and the European Economic Area.⁵

A. Legal Aid

In Finland, persons with limited means may be granted legal aid, whereby legal expenses are provided from public funds. Legal aid is regulated by the Legal Aid Act (*Oikeusapulaki / Rättshjälpslagen*, 2002/257), the Act on Legal Aid Offices (*Laki valtion oikeusaputoimistoista /*

¹ Code of Judicial Procedure, Chapter 15, Sections 1-2.

² Principles laying down the basis for advocate fees (*Asianajopalkkioiden määräämisperusteet / Grunderna för bestämmande av advokatarvoden*), Section 1.

³ Principles laying down the basis for advocate fees (*Asianajopalkkioiden määräämisperusteet / Grunderna för bestämmande av advokatarvoden*), Section 4.

⁴ Principles laying down the basis for advocate fees (*Asianajopalkkioiden määräämisperusteet*) (8.6.1990, amended as of 1.1.1993), Section 5.

⁵ Code of Conduct for Lawyers in the European Union, Section 3.3.

Lag om statliga rättshjälpsbyråer, 2002/258) and various government decrees that have been issued based on these Acts.⁶

Legal aid may be granted to an individual whose case is being heard in a Finnish court or whose place of residence is in Finland, as well as citizens of a Member State of the European Union or the European Economic Area.⁷ Companies or associations are not eligible for legal aid. Legal aid is granted for free or against a deductible, on the basis of the financial means of the applicant.⁸ However, it will not be granted to a person who benefits from legal expense insurance in relation to a matter, except if the maximum amount to be paid out under the policy has been exceeded.⁹

Legal aid shall be applied for from one of the legal aid offices, which are located in areas in which it is deemed that legal aid will be most required, normally in the same municipalities as the District Courts in Finland. In these offices, work subject to legal aid is undertaken by public legal aid attorneys. Legal aid matters may, however, also be handled by advocates and any other person with a Master's degree in law subject to certain exceptions as described further below.

In Finland, legal aid covers all types of legal matters, such as family and employment law related issues, contract law, assistance to suspected offenders and to victims of crime, and various appeals (e.g., relating to welfare and social security payments). The services covered by legal aid in any given case depend on the nature and importance of the matter.

In criminal proceedings and pre-trial investigations, the defendant is, under certain circumstances, entitled to a public defender regardless of his or her financial situation. A public defender will be appointed on request for a suspect of an aggravated offense and for a person who has been arrested or detained. The court may on its own initiative appoint a public defender for a person under 18 years of age or for a person incapable of seeing to his or her own defense. The fee of the public defender is paid by the State. If the defendant is convicted of an offense, he or she is obligated to reimburse the State for the public defender's fee.¹⁰ If, however, the means of the defendant are such that he or she would be entitled to legal aid, the obligation to reimburse the State will be determined accordingly.

⁶ For example Government Decree 388/2002 on Legal Aid (*Valtioneuvoston asetus oikeusavusta / Statsrådets förordning om rättshjälp*); Government Decree 290/2008 on Legal Aid Fee Criteria (*Valtioneuvoston asetus oikeusavun palkkioperusteista / Statsrådets förordning om grunderna för arvoden vid allmän rättshjälp*), Decree 425/2002 of the Ministry of Justice on the location of legal aid offices and their branches and sub-branches (*Oikeusministeriön asetus valtion oikeusaputoimistojen sekä niiden sivitoimistojen ja sivuvastaanottojen sijainnista / Justitieministeriets förordning om förläggningskommunerna för de statliga rättshjälpsbyråerna samt deras filialbyråer och filialmottagningar*) and Decree 819/2009 of the Ministry of Justice on legal aid districts and the location of legal aid offices (*Oikeusministeriön asetus oikeuspiireistä ja oikeusaputoimistojen toimipaikoista / Justitieministeriets förordning om rättshjälpsdistrikten och om rättshjälpsbyråernas verksamhetställen*).

⁷ Legal Aid Act, Section 2. Legal aid will not be given if the matter is of little importance to the applicant, if the benefit of legal aid would not outweigh its costs or if the pursuit of the matter would constitute an abuse of process.

⁸ The means of the applicant are determined based on a calculation of the funds available to him or her per month. Legal aid may be granted where the available means of a single person are below €1,300 or of spouses €1,200 per person. The amount of the basic deductible is determined based on the applicant's means (Government Decree on Legal Aid). For more information, see *Millä tuloilla oikeusapu myönnetään / Med vilka inkomster beviljas rättshjälp*, available at: <http://www.oikeus.fi>.

⁹ Legal Aid Act, Section 3(b).

¹⁰ Criminal Procedure Act, Sections 10-11.

Moreover, if a person becomes a victim of domestic violence or a sexual offense, the court may appoint an attorney or a support person (trial counsel) for the victim for purposes of the pre-trial investigation and the trial. The attorney or the support person may be appointed regardless of the means of the victim, and their fees and expenses are paid by the State.¹¹

In addition to court proceedings, legal aid covers other legal services such as legal advice, settlement negotiations with an opposing party, inventories of decedent's estates, assistance in asset distributions and estate distributions, drafting of documents and filing of appeals and complaints. These other legal services are provided as legal aid only by public legal aid attorneys, not by private attorneys.

When the legislation on legal aid was revised in 2002, one of the goals was to create a scheme where a considerable share of the population would be eligible for legal aid, *i.e.*, a system close to a civil right. According to the government bill, approximately 75% of the population is entitled to some form of legal aid under the current thresholds for means-testing.¹²

B. Ombudsman and Agencies

Following the Swedish model, the Finnish government has established Ombudsman Offices and agencies where individuals can bring complaints against private companies and authorities.

The most prominent ombudsman is the Parliamentary Ombudsman, who together with the Chancellor of Justice oversees legality in Finland. The task of the Parliamentary Ombudsman is to ensure that authorities and officials observe the law and fulfill their duties. Special attention is paid to the implementation of fundamental and human rights and children's rights as well as police operations. Anyone, regardless of their citizenship, is entitled to turn to the Parliamentary Ombudsman and/or the Chancellor of Justice, should the complainant believe that an authority, public official or public body has acted in a manner that violates their rights. The services of the Parliamentary Ombudsman and Chancellor of Justice are free of charge to the complainant. An investigation carried out by their offices may in itself result in the authority or public official himself or herself correcting an error.

There are also numerous Ombudsman offices whose task is to monitor the compliance with specific laws or policies. Thus, the Ombudsman for Minorities advances the status and legal protection of ethnic minorities and foreigners; the Ombudsman for Equality supervises compliance with the Act on Equality between Women and Men; the Ombudsman for Children promotes the interests and the implementation of the rights of children; the Data Protection Ombudsman maintains and promotes the right of privacy under the Data Protection Act and the Consumer Ombudsman ensures consumers' economic, health and legal position and implements consumer policy.

Apart from the Ombudsman offices, there are agencies empowered to settle disputes between private persons and undertakings. The Consumer Complaint Board, for example, is a neutral and independent expert body whose members represent consumers and businesses. The Board issues recommendations concerning disputes involving consumer and housing transactions. It can also issue statements to courts handling cases which fall within its sphere of competence.

¹¹ Criminal Procedure Act, Section 10.

¹² This is compared to approximately 44% prior to the change in the law which occurred in 2002. *See* Government Bill for a new Legal Aid Act and certain related legislation (HE 82/2001), Section 3.2.2.

The services of the various Ombudsman offices and agencies are generally free of charge to the complainant. Although many of these offices/agencies issue non-binding recommendations only, their opinions often serve as important guidelines for other authorities and courts. Filing a complaint is therefore an inexpensive and often effective remedy for private persons.

C. NGOs

Several NGOs also provide free legal advice within specific spheres. For example, the Finnish Refugee Advice Centre (*Pakolaisneuvonta / Flyktrådgivningen*) advises asylum seekers, refugees and other foreigners with regard to their legal rights. The Finnish League for Human Rights (*Ihmisoikeusliitto / Förbundet för mänskliga rättigheter*) provides more wide-ranging advice in relation to human rights in general, while the Feminist Association Union (*Naisasialiitto Unioni / Kvinnosaksförbundet Unionen*) focuses on issues related to women's rights.

II. *Pro Bono Opportunities in Finland*

Due to the well-developed and broad system of public welfare services, the need for *pro bono* services in Finland is limited. Nevertheless, the Finnish Bar Association encourages lawyers to become involved in *pro bono* activities. For example, following the Asia tsunami disaster in December 2004, it urged law firms and advocates, within the limits of their practice areas and available resources, to offer legal assistance to the victims and their relatives free of charge.¹³ Some 70 law firms signed up to the Bar Association's list of law firms offering *pro bono* services to the victims.¹⁴

The Finnish Bar Association also runs a program, *Asianajajapäivystys / Advokatjouren*, in which advocates provide oral advice free of charge in relation to various legal questions. The purpose of the program is to help private persons assess their need for further legal advice, and to help them identify advocates with relevant experience and/or competent authorities where further advice is required. *Asianajajapäivystys* operates in 10 locations in Finland, for a few hours at a time once or twice a week. In 2005, free advice was given to some 2,000 persons.¹⁵ In practice, attorneys from law firms of all sizes participate in the program.

In 2006 the Finnish Bar Association set up a project to educate young people about the Finnish legal system. Under the *Oikeuskasvatusprojekti / Projekt om juridiskt lärande*, lawyers go to schools to speak with 14-16 year olds about the basics of the legal system in Finland, the foundations of civil and criminal law, as well as rights and responsibilities of children and young people in society.¹⁶

Medium-sized and large Finnish law firms engage in *pro bono* or charitable work on a regular basis, particularly as the influence of American and English firms in this respect continues to grow. Apart from the *Asianajajapäivystys*, *pro bono* work often involves assisting different charity organizations and foundations rather than private persons. Some of the big commercial law firms, for instance, have board representatives in foundations and thereby provide continuous legal assistance free of charge.

¹³ Editorial in *Defensor Legis* 1/2005. More than 200 Finns were reported dead or missing in the disaster, which was seen as the largest peacetime catastrophe to overtake Finland in the modern era.

¹⁴ "Maksuton oikeusapu Kaakkois-Aasian katastrofin uhreille alkoi", published on www.verkkouutiset.fi.

¹⁵ Editorial in *Defensor Legis* 1/2005.

¹⁶ More information about the Bar Association's *pro bono* initiatives is available at: <http://www.asianajajaliitto>.

III. Conclusion

The positive approach of the Finnish Bar Association to *pro bono* work is favorable to a more widespread *pro bono* practice in Finland. However, due to their well-developed social welfare system, which includes State-funded legal services, *pro bono* work in Finland is likely to remain focused on assisting various foundations and charity organizations in achieving their objectives.