

Assessing Availability of Public Legal Aid: Evidence from Finland

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This paper discusses eligibility to and availability of public legal aid in the context of Finland. In particular, we look at which socioeconomic characteristics correlate with being an eligible public legal aid client on one hand and conversely identify several barriers to access that prevent otherwise eligible, often low-income, clients receiving legal aid on the other.

We combine three data sets including results from interviews conducted in 2021 with Finnish civil servants, legal counsels and private lawyers within the public legal aid infrastructure, Finnish Legal Register Centre's data on all public legal aid clients between 2016-2018 as well as Statistics Finland's administrative registry data consisting of socioeconomic information on all Finnish citizens.

Finally, we provide a discussion on our policy-relevant findings in terms of frictions in matching clients in need to public legal aid services, which are in Finland provided by both private lawyers and public legal aid attorneys.

Keywords: Public legal aid, Availability, Finland

1 INTRODUCTION

In contemporary society, citizens are more prone to define different events with legal concepts and as objects of a possible legal process. As a result of this kind of judicialization everyday interactions are structured and interpreted from the perspective of 'charges' and 'lawsuits', constantly lowering the psychological barrier to take disputes to legal institutions for resolution.¹

At the same time, increased diversity and complexity of legal regulation has resulted in an environment which effectively prevents laymen from pursuing their

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¹ J. Kivivuori, M. Aaltonen, M. Näsi, K. Suonpää & P. Danielsson, *Kriminologia. Rikollisuus ja kontrolli muuttuvassa yhteiskunnassa* 287 (Gaudeamus, Helsinki 2018).

matter in court without obtaining professional, third-party legal advice. Although the growing demand for ever more specialized legal expertise has added pressure to facilitate better access to legal aid services, it is still common even for the citizens of developed countries to face a quandary as to whether and to what extent they are entitled to public legal aid.²

Prior literature identifies several common barriers in accessing justice at an international level. These can be categorized into societal and cultural hurdles such as literacy, education, poverty, and discrimination, as well as institutional and economic factors including insufficient governmental recourses, limited or non-existent legal aid, and the fragmentation of legal services providers and limited coordination of private and public sector actors.³ Evidence from the United Kingdom suggests that the reduced scope of legal aid for private cases has resulted in restricted access to justice due to the consequent decrease in private providers of legal assistance.⁴ Consequently, the number of self-representing litigants in the United Kingdom's family courts has increased significantly in recent years.⁵

Moreover, previous findings also suggest geographically uneven accessibility as well as a long waiting time for legal services – particularly when legal aid is not provided for early-stage advice and help, which may increase the costs of the resolution process.⁶ Evidently, the timely delivery of legal aid services also supports states' efforts to manage public expenditure by preventing legal problems from escalating.⁷

This study adds to the literature on barriers to legal aid services⁸ by providing novel empirical findings from Finland, which is a country with a small population, yet is highly developed with a relatively extensive welfare system. In Finland, public legal aid cases amount to roughly 70,000 per year, largely concentrating on

² OECD, *Access to legal and justice service*, in *Government at a Glance* (OECD Publishing, Paris 2017).

³ See for instance M. Abate, A. Birhanu & M. Alemayehu, *Advancing Access to Justice for the Poor and Vulnerable Through Legal Clinics in Ethiopia*, 11(1) *Mizan L. Rev.* 11–31 (2017), doi: 10.4314/mlr.v11i1.1; J. Beqiraj & L. McNamara, *International Access to Justice: Barriers and Solutions*, Bingham Centre for the Rule of Law Report (2014).

⁴ E. Marshall, S. Harper & H. Stacey, *Family Law and Access to Legal Aid*, Research Briefing Paper, Public Law Project (2018).

⁵ K. L. Richardson & A. K. Speed, *Restrictions on Legal Aid in Family Law Cases in England and Wales: Creating a Necessary Barrier to Public Funding or Simply Increasing the Burden on the Family Courts?*, 41(2) *J. Soc. Welfare & Fam.* 135–152 (2019), doi: 10.1080/09649069.2019.1590898.

⁶ O. Lehtonen & M. Sutela, *Geospatial Research Supporting Decision-Making in Legal Services – an Assessment of the 2019 District Court Reform in Finland*, 13(3) *Int'l J. Ct. Administration* (2022), doi: 10.36745/ijca.385; Marshall, Harper & Stacey, *supra* n. 4; A. Patel, N. J. Balmer & M. Smith, *Geographical Barriers to Education Law Advice*, 180 *The Geographical J.* 211–223 (2014), doi: 10.1111/geoj.12031.

⁷ L. T. Doust, *Foundation for Change*, Report of the Public Commission on Legal Aid in British Columbia, Public Commission on Legal Aid, Vancouver (2011).

⁸ In this study, the expression 'public legal aid service' refers to any publicly funded service related to legal information, legal advice, and/or legal representation.

criminal and family law cases.⁹ In particular, the Finnish public legal aid system is unique in terms of its dual nature, which allows legal aid to be provided by both private lawyers and public legal aid attorneys.

To the best of our knowledge, this paper is the first one to focus on private providers of publicly funded legal aid. The contribution is twofold. First, we identify several procedural and bureaucratic frictions arising from the scope and eligibility criteria of legal aid that are potentially detrimental to the availability of and the accessibility to legal aid services. Second, we provide a context for our findings by examining and reporting fully representative socioeconomic and demographic statistics on all Finnish public legal aid clients between 2016 and 2018.

This study is motivated by the Finnish Ministry of Justice's ongoing work to revise legal aid eligibility criteria and redefine the emphasis between public funds and client contributions in covering legal expenditure. In Finland, the uncertainty over the extent of private legal risks is an issue particularly for middle class households, who may even be incentivized to avoid court proceedings altogether. Meanwhile, low-income households are, in principle, provided with free public legal aid, whereas high-income households have enough resources to cover their own legal costs.

The rest of the paper is organized as follows. In the next section, we provide a theoretical framework for our study, describe the data, and formulate our research problems. Section 3 first discusses the general principles of the Finnish public legal aid system after which we sketch a profile of the typical Finnish public legal aid client. Sections 4 and 5 present the results and conclude the paper, respectively.

2 RESEARCH DESIGN

2.1 THEORETICAL FRAMEWORK

The Article 6 of the United Nation's *Universal Declaration of Human Rights* states that 'everyone has the right to recognition everywhere as a person before the law'. Hence, the right to legal aid is an essential condition of a justice system founded on the rule of law because it eliminates obstacles and barriers that impair access to justice.¹⁰ Even though the Finnish constitution does not explicitly associate legal aid with the fairness of a trial, the justification of the constitution clearly emphasizes that the conditions of a fair trial and the application of law must be interpreted in favour of human rights.¹¹

⁹ This article is based on an original work by M. Tolvanen, T. Koskela, M. Huhtilainen, M. Sutela, M. Törölä & E. Eskelinen, *Selvitys julkisen oikeusavun tulorajojen vaikutuksista*, No. 2021:58 Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja. Valtioneuvoston kanslia (2021).

¹⁰ A. Jokela, *Oikeudenkäyntikulut ja maksuton oikeusapu*. Alma Talent, Helsinki (2019); K. Jüriloo, *Free Legal Aid – a Human Right*, 33(3) Nordic J. Hum. Rts. 203–219 (2015).

¹¹ Government Bill HE 309/1993 vp, 73–74.

Specifically, public legal aid enhances the equality of arms whereby the rights of the defence in a criminal case would remain unfulfilled should the accused not get expert legal assistance, regardless of his or her financial status¹²: according to the provisions of international agreements, everyone accused of a crime has the right to defend themselves and, if necessary, to receive legal aid free of charge to the extent required by the interests of justice (Art ECHR 6(3).¹³ and International Covenant on Civil and Political Rights (ICCPR) Art.14.3d).¹⁴ Interestingly, the European Court of Human Rights has interpreted the right to free legal aid to extend to disputes as well, if considered necessary.¹⁵

In criminal cases, the assessment of the need for public legal aid shall take into account the severity of the expected punishment, the legal complexity of the case, and the personal circumstances of the defendant. The latter refers to, for example, person's age, nationality, and background.¹⁶ Effectively, the decision must consider the situation as a whole and, if necessary, the court must, on its own initiative, arrange a lawyer for the defendant.¹⁷

According to the Charter of Fundamental Rights of the European Union, free legal aid must be provided whenever such aid is necessary for the relevant person to effectively exercise his or her right to have the case resolved by court (Article 47.3). The European Court of Human Rights has issued several judgments in which a person has been denied the right to be assisted in a pre-trial investigation or in court, in violation of the European Convention on Human Rights. Examples of such rulings include, but are not limited to:

Case of Pakelli v. Germany 25 April 1983. The legal issues in a case involving a drug offence were so complex that the rights of the accused would have required legal aid during the hearing at the Court of Appeal.¹⁸

Case of Granger v. The United Kingdom 28 March 1990. Mr Granger was found guilty of the first, second and fourth charges against him, and he was sentenced to five years of imprisonment. At the Court of Appeal, he was denied legal aid even though he did not have sufficient means to pay for legal assistance. The interests of justice would have required him being given such assistance for

¹² Jokela, *supra* n. 10; L. Ervo, *Oikeudenmukainen oikeudenkäynti* (Sanoma Pro Oy, Helsinki 2005). The right to access a lawyer in criminal proceedings and in European arrest warrant proceedings is governed by Directive 2013/48/EU of the European Parliament and of the Council of 22 Oct. 2013.

¹³ See more about the Art. 6.3 in Ervo, *supra* n. 12, at 198–202.

¹⁴ Clearly, the interested party, i.e., the victim of the crime, enjoys an equal right to legal aid.

¹⁵ ECHR 9 Oct. 1979, A 32, Case of Airey v. Ireland.

¹⁶ Jokela, *supra* n. 10.

¹⁷ About the right to defend oneself and, if necessary, to public legal aid, see for instance M. Pellonpää, M. Gullans, P. Pölönen & A. Tapanila, *Euroopan ihmisoikeussopimus* 719–736 (Alma Talent, Helsinki 2018).

¹⁸ Application no. 8398/78.

free. As the case involved a difficult matter of law Mr Granger was unable to answer to without assistance, the decision was in breach of Article 6(3c).¹⁹

Case of Twalib v. Greece 9 June 1998. Mr G.C. was arrested at Athens Airport for smuggling drugs. In trial he was convicted and sentenced to twelve years of imprisonment. He was given a fine of 5,000,000 drachmas (GRD) for the drug-related offences and sentenced to additional three months of imprisonment for the use of forged documents. The severity of the sentence as well as the requirement of fairness would have required the defendant to be assisted by a lawyer, as he was a foreigner and did not understand the Greek appeal process. He was also accused of hanging an illegal banner from a bridge.²⁰

Case of Salduz v. Turkey 27 November 2008. Mr Salduz (minor) was taken into custody by police officers from the anti-terrorism branch of the İzmir Security Directorate on suspicion of having participated in an unlawful demonstration in support of an illegal organization. His rights had been violated, as he had been denied access to a lawyer while in police custody, and his pre-trial statement had been used as decisive evidence in court.²¹

In practice, however, the access to justice is imperfect due to the reasons discussed earlier. Accordingly, this study draws attention to the fact that cases involving public legal aid are not automatically attractive to private providers because the state enforces a cap on both chargeable hourly rates and maximum working hours. As such, it poses a risk of a development where cases are not either taken on at all or the services provided by publicly funded legal aid end up being of lower quality than similar services acquired by self-paying clients. Hence, to ensure cost-effective yet high-quality legal aid, a careful, evidence-based planning of income limits and the fee structure is required.

2.2 DATA AND RESEARCH PROBLEMS

The threefold data include Finnish Legal Register Centre's data on all public legal aid applicants and clients between 2016–2018, Statistics Finland's administrative registry data consisting of socioeconomic information on all Finnish citizens as well as results from interviews conducted with advocates²² (representing four small and four medium-sized law firms) and licenced legal counsels²³ (representing four

¹⁹ Application no. 11932/86.

²⁰ Application no. 42/1997/826/1032.

²¹ Application no. 36391/02.

²² An advocate is a person who is registered in the Roll of Advocates as a member of the general Finnish Bar Association (Advocates Act (496/1958)).

²³ According to the Licenced Legal Counsel Act (715/2011), s. 2 (1), the right to act as a licenced legal counsel requires that a person: (1) has completed a Master of Laws degree in Finland other than a master of international and comparative law degree, or a corresponding law degree abroad which has

additional law firms). For the purpose of background information analysis of Finnish clientele, we excluded those instances from the data where the legal aid application was either rejected or the client only received free telephone counselling.

Most of the interviewees were either owners or partners and widely dispersed geographically covering extensive parts of Finland. The interviews took place in April 2021. We define a small law firm as one with between one and two lawyers (75% of all law firms), whereas a medium-sized law firm constitute an office with three to ten lawyers (about 20% of all law firms).²⁴ The smallest firms in the data employed one lawyer, while the largest one had seven lawyers on their payroll in addition to several law students working in an auxiliary role.

At the time of the interviews, some of the firms had been in business for decades, while the more recent ones had been established in the 2000s. The data include both firms that are more specialized in criminal cases as well as firms that are more oriented toward civil cases. Nevertheless, all of them reported handling both criminal and civil cases at least to some extent.

Likewise, the proportion of clientele receiving public legal aid varied among the firms: while for certain firms the public legal aid played a less important role in terms of revenue, we conversely interviewed firms where the majority of clients received legal aid from public funds. Namely, in around sixty percent of the law firms interviewed, at least half of the clients received legal aid from public funds. In criminal cases, between thirty and ninety percent of clients had received legal aid from public funds. In civil matters, the corresponding figure ranged from ten to fifty percent.

From a theoretical perspective, this article is motivated by the right to a fair trial, access to justice and the equality of arms. Accordingly, we examine four separate research problems, but within the common theme of identifying barriers to entry in legal services: (1) how does the scope of legal aid cases affect commercial risks for private sector providers and the subsequent availability of legal aid, (2) how does the scope of public legal aid cases correspond with the complexity of real-world legal problems, (3) what are the main problems arising from the current income limits for legal aid and, finally, (4) what are the main bureaucratic and procedural inadequacies in the system.

been recognized in Finland as separately provided; (2) has become sufficiently acquainted with the work of an attorney and legal counsel; (3) is honest and is not manifestly unsuitable for the work of an attorney and legal counsel; and (4) is not bankrupt and has full legal capacity.

²⁴ Finnish legal aid offices employ, on average, 1.5 lawyers. See for instance A. Rissanen & M. Lasola, *Julkisen oikeusapu: yksityisten avustajien toiminta*, 124 Research Communications. National Research Institute of Legal Policy (2014).

3 PUBLIC LEGAL AID IN FINLAND

3.1 THE PURVIEW OF LEGAL AID ACT

The Finnish public legal aid system is considered a quasi-universal service – relatively generous and comprehensive by international standards – which is granted on the basis of the available means and the assets of the applicant, and the aid will be fully or partially covered at the expense of the state.²⁵ The system is governed by Oikeusapulaki²⁶ (257/2002), from now on the ‘Legal Aid Act’, which sets out the prerequisites for and coverage of public legal aid. Recent advancements in enhancing the availability and quality of publicly funded legal aid include the introduction of nationwide telephone counselling and the expansion of e-services such as online chats and the electronic application system.²⁷

In essence, the Finnish system is designed to promote equality and fairness in the legal system by ensuring that all citizens have access to justice and can exercise their legal rights, regardless of their financial situation.²⁸ Indeed, instead of its historical interpretation of being charity for the poor, Finland cherishes public legal aid as a basic human right.²⁹

Legal aid covers the provision of legal advice, the necessary measures and representation before a court of law and/or other authority, and the waiver of certain expenses related to the consideration of the matter.³⁰ Importantly, legal aid in Finland is either granted through the public legal aid offices (PLA) or courts, and can be provided by both private lawyers and public legal aid attorneys.³¹ PLAs provide a variety of legal services from counselling to court duties, whereas private lawyers and licenced legal counsels can only represent public legal aid clients in court proceedings. However, in order to receive compensation from state funds, the representation must be first approved by an PLA office.³²

²⁵ M. Tolvanen, *National Approaches to Effective Criminal Defence*, in *Effective Criminal Defence in Europe* Intersentia (2010) Ch. 5; J. Johnsen & F. Regan, *How to use an International ‘best Policy’ Model in the Analysis and Improvement of Finnish Legal aid*, in *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ* 151–188 Intersentia (2007).

²⁶ Rest of the regulatory framework is complemented by the Act on State Legal Aid Offices, and three government decrees on legal aid, legal aid fee criteria, and on State Legal Aid offices.

²⁷ M. Rissanen, *Legal Aid in Finland*, in *Outsourcing Legal Aid in the Nordic Welfare States* (Springer International Publishing AG 2018); F. Regan & J. Johnsen, *Are Finland’s Recent Legal Services Policy Reforms Swimming Against the Tide of International Reforms?*, 26 *Civ. Just. Q.* 341–357 (2007).

²⁸ J. Niemi, *Oikeudenkäynnin kustannuksista*, 7–8/2020 *Lakimies* 1255–1261 (2020); Jokela, *supra* n. 10; Rissanen & Lasola, *supra* n. 24; Tolvanen, *supra* n. 25.

²⁹ H. Rosti, J. Niemi & M. Lasola, *Legal Aid and Legal Services in Finland* 237 (Oikeuspoliittisen tutkimuslaitoksen tutkimuksia 2008).

³⁰ Section 1 of the Legal Aid Act (257/2002).

³¹ M. Fredman, *Rikosasianajajan käsikirja*, Alma Talent, Helsinki (2021); Tolvanen, *supra* n. 25; Rosti et al, *supra* n. 29.

³² Rissanen, *supra* n. 27.

The first condition for granting legal aid is the applicant's inability to pay for it, that is, the so-called 'financial criteria',³³ which are determined by section 3 of the Legal Aid Act and the Decree on Legal Aid. Namely, the legal aid eligibility is based on monthly disposable income, which are assessed by calculating applicant's net monthly income after tax and expenditure. Income in this context refers to salaries and wages, pensions, dividends, rents, interest, and other forms of income on capital, business and professional income and certain welfare benefits.³⁴ Deductible expenses consist of, for instance, a fixed deduction of 300 Euros for each child, reasonable housing costs, childcare fees, alimony, recovery proceedings and loan arrangements.³⁵ Importantly, the incomes of both parties are taken into account if the applicant is married or cohabits.

Legal aid is fully compensated from public funds to a single applicant, whose monthly disposable funds are 600 euros or less. From there, clients face a gradually increasing excess, as reported in Table 1. Hence, if the monthly disposable funds exceed 1,300 euros, the applicant will not be granted publicly funded legal aid. However, in addition to the basic excess, the client may be asked to provide a supplementary payment due to his or her spouse's wealth. Namely, the client is responsible for an additional contribution worth 50% of his or her liquid funds that exceed 5,000 Euros to be used to cover the expenses.³⁶ In this vein, a liquid asset is not necessarily cash deposits only, but any asset that can be 'easily liquidated', for instance shares, mutual funds, and other investments.

Table 1 Monthly Disposable Funds and the Corresponding Excess

<i>Excess</i>	<i>Single person</i>	<i>Married/in a Consensual Union, per Person</i>
0%	≤€600	≤€550
20%	≤€800	≤€700
30%	≤€900	≤€800
40%	≤€1 050	≤€1 000
55%	≤€1 150	≤€1 100
75%	≤€1 300	≤€1 200
100%	>€1 300	>€1 200

Source: Tolvanen et al. (2021).

³³ Niemi, *supra* n. 28; Jokela, *supra* n. 10; Tolvanen, *supra* n. 25; Rosti et al, *supra* n. 29.

³⁴ Tolvanen et al., *supra* n. 9.

³⁵ Rissanen, *supra* n. 27.

³⁶ Tolvanen et al., *supra* n. 9.

To give perspective, the latest estimate suggests that roughly 55% of the Finnish population over fifteen years of age is eligible for publicly funded legal aid solely based on financial criteria. Likewise, roughly 22% of the population over fifteen years of age would be eligible for fully compensated legal aid without personal excess.³⁷

However, the determination of eligibility is not as straightforward as the sole calculation of monthly disposable income would suggest. Rather, public legal aid in Finland is a supplementary solution used as a last resort. In practice, public legal aid is not usually granted if the applicant has legal expenses insurance (LEI) provided by private insurance companies from which the expenses can be reimbursed.³⁸ Since LEI is typically provided as an add-on to household insurance, some 90% household insurances in Finland include LEI.³⁹ In consequence, prior estimations conclude that some 80% of the Finns are covered by LEI, though the prevalence of LEI is higher among high-income population and vice versa.⁴⁰

In practice, however, a legal expenses insurance does not automatically prevent a person from receiving public legal aid.⁴¹ On one hand, the insurance companies have tightened their policy conditions in terms of which cases are covered by LEI; for instance, family and inheritance issues are typically excluded. Likewise, LEI applies to legal disputes that can be resolved in court but does not cover expenses mediation and legal advice. On the contrary, public legal aid system covers all legal problems without limits on indemnity. In addition, the maximum coverage is usually capped at 8,500 euros, with an excess of 15–20%, and under certain stipulations, a client may be granted public legal aid for both the excess and costs exceeding the maximum coverage.⁴²

3.2 BACKGROUND CHARACTERISTICS OF A TYPICAL FINNISH PUBLIC LEGAL AID CLIENT

The purpose of the following analysis is to contextualize our findings by providing a description of the population that is at most risk of facing the frictions in the system we identified during our interviews, namely a clientele that is relatively young, unmarried, modestly educated and at the time of his or her legal problem, on low income. Interestingly, however, neither women nor men are overrepresented in our data, as about 49% of the Finnish legal aid clients in 2016–2018 identify themselves as a woman and vice versa.

³⁷ *Ibid.*

³⁸ Jokela, *supra* n. 10; Rissanen, *supra* n. 27; Rissanen & Lasola, *supra* n. 24.

³⁹ M. Lasola & A. Rissanen, *Oikeusturvavakuutus ja julkinen oikeusapu*, 119 Research Communications, National Research Institute of Legal Policy (2013).

⁴⁰ Tolvanen et al., *supra* n. 9.

⁴¹ Rissanen & Lasola, *supra* n. 24.

⁴² Rissanen, *supra* n. 27; Rosti et al, *supra* n. 29.

The median age of the clients is about 36 years. Roughly 34% of the clients are between the age of 20–34, whereas clients over 65 years old account for 11% of the clientele. Slightly less than half are unmarried in contrast to the 21% of all clients, who are either married or live in a cohabitation relationship. The second largest group consists of divorcees (17%). A more detailed information on relationship status is reported in Table 2. The figures represent averages calculated over 2016–2018.

Table 2 Relationship Status of the Legal Aid Clients

<i>Status</i>	<i>N</i>	<i>%</i>
Unmarried	25 227	48
Married	8 553	16
Cohabitation	2 574	5
Registered partnership	20	0
Widowed	2 707	5
Divorced	9 418	17
Living apart	2 523	5
Other	3 985	7
Total	55 006	100

Source: Tolvanen et al. (2021).

The majority, that is 76%, of the legal aid clients have completed secondary education, while only about 14% hold either a lower or a higher university degree. Moreover, the Finnish public legal aid client is most likely to be either employed (25%) or retired (23%); it is worth noting that the share of unemployed clients has stayed almost unchanged over time.

Most (76%) of the legal aid clients' monthly disposable incomes were less than 600 Euros, hence granting them free legal aid. Of all clients with an excess of 0%, about 56% were not married in contrast to the 30% who were married. Meanwhile, 22% of the clients eligible for free legal aid were cohabiting. Only six percent of all clients reported of having children under the age of 18 living in the same household. Conversely, 73% did not have any dependants, while 12% reported of having one dependant. Results are intuitive concerning the earlier information about relationship status: while 84% of the unmarried clients did not have any dependants, the corresponding share was dramatically smaller among those who were either married or in a cohabitation relationship (56%).

4 PROBLEMS AFFECTING THE AVAILABILITY OF LEGAL AID: INTERVIEW RESULTS

4.1 INCOME LIMITS AND CLIENT EXCESS

The interviewees expressed a concern that the Legal Aid Act in its current form does not guarantee equality before the law, as it is supposed to do. The criticism was largely aimed at the manner in which the client's excess is calculated, particularly due to the fact that legal costs tend to rise unreasonably quickly when the monthly disposable incomes are small. If the monthly disposable income is at the level of 601 Euros, i.e., the client exceeds the threshold just by one Euro, his or her excess instantaneously increases from 0% to 20%. In this vein, the interviewees brought up several examples on past cases where the client either did not perceive hiring a lawyer worth it due to the size of the excess or conversely tried to resolve the situation by taking a loan from a bank, which was considered completely unreasonable.

As a solution, the unanimous proposition was to increase the income limits, particularly the first threshold in order to allow a greater percentage of low-income clients to receive free legal aid. However, it is worth noting that the interviewees are incentivized to advocate the raising of income limits as it would most likely increase the clientele using their services.

The interviewees largely shared the view that the system is too inflexible to accurately reflect the real-world complexities, and that the said inflexibility is particularly apparent in the manner in which the monthly disposable incomes are assessed. Rather, the situational context at the individual level should be examined more closely, with one possible solution being allowing applicants to deduct all their expenses. Second, the interviewees suggested that the spouse's income should not affect the client's excess, because in reality it is rather uncommon for anyone to be able to ask their spouse to pay for their legal costs.⁴³ Interestingly, the interviewees reported about opportunistic behaviour where the marriage was either postponed or the spouses divorced or moved apart before an upcoming trial.

4.2 FEE STRUCTURE

The interviewees' opinions varied as to whether the economic attractiveness of a legal case is affected by the amount of public legal aid the client is entitled to. Nevertheless, almost all interviewees stated that they have had the experience of not taking on a case because the client was not granted legal aid from public funds.

⁴³ Besides, the common-law spouses can have separate households with separate housing costs.

While such situation has occurred only occasionally for some of the interviewees, others revealed that up to a third of their clients' cases have been rejected due to the lack of public contribution, possibly to avoid the risk of client not affording his or her payments. The decision to not take on a case due to the absence of public legal aid has emerged both in complex criminal cases and in many disputes, particularly when the dispute is related to children's maintenance and visitation rights.⁴⁴

However, as discussed earlier in paragraph 2.1, a considerable business risk continues to exist even if the client is granted free public legal aid. Namely, the interviewees emphasized that the maximum of 80 chargeable working hours per case are not always enough, forcing lawyers to work for free without compensation for the amount of work that exceeds the cap. In addition, the interviewees suggested that in standard, basic criminal cases, the prosecutor often exaggerates the number of working hours spent on preparation by more than five hours. Similar disparity between what is required in complex cases and the actual hours worked under the remuneration policy across different areas of legal aid practice has been reported in, for instance, England and Wales.⁴⁵

Perhaps unsurprisingly, the interviewees proposed that the fixed hourly rate in legal aid cases should be increased, as the current rate is considered disproportionate to the actual costs.⁴⁶ According to the interviewees, it does not make sense, business-wise, to take on burdensome cases under the current compensation policy. In addition to their own salary and incidental expenses, the interviewees suggested that the compensation is not sufficient to cover, for example, the salary of support staff. Effectively, inadequate remuneration may create an environment where cases are not taken on, thus deteriorating the access to justice.

4.3 PROCEDURAL AND OTHER INEFFICIENCIES

The exclusion of administrative court proceedings from the scope of legal aid was considered as a severe shortcoming. Consequently, the interviewees suggested that the extension of legal aid to administrative court proceedings should be reassessed. Similarly, the coverage of legal expenses insurance should be extended, for instance to employment-related disputes that are currently excluded. In addition, it was

⁴⁴ Several interviewees described a situation where the other parent was not granted free public legal aid due to the child allowance or because he or she was living in an owner-occupied apartment, from which only the interest on the loan was deducted.

⁴⁵ C. Denvir, J. Kinghan, J. Mant & D. Newman, *Legal Aid and the Future of Access to Justice* (Hart Publishing, Oxford 2023).

⁴⁶ Consistent for instance with Rissanen & Lasola, *supra* n. 24. In 2023, the Finnish Supreme Court has granted a lawyer a leave to appeal (VL 2023–63) in a case concerning the reasonableness of the hourly fee.

suggested that since the legal expenses insurance does not provide coverage in criminal cases where the client is a defendant, the possibility of obtaining a decision to appoint a defence lawyer should be explored. Interestingly, the interviewees reported about a somewhat common practice in cases involving a divorce whereby the legal aid recipient's lawyer takes the case to court solely because the legal aid fee is not paid if the case is settled. Specifically, the public legal aid system should encourage, where appropriate, the early resolution of disputes.

The interviewees noted that leaving the responsibility of collecting the excess from the principal to the lawyer exposes them to a considerable business risk, as according to the interviewees' experiences, the excess cannot always be collected, thus creating a consequent credit loss for the law firm.⁴⁷ In order to avoid a loss of receivables, some interviewees mentioned about using interim billing during the case or have allowed the client to pay the excess in instalments. Interestingly, few interviewees indicated of having felt a sense of unfairness for charging the deductible from a low-income client in a financially difficult situation. As a solution, the interviewees proposed that the legal aid payment system should return to the previous system, where they charged the state the full amount and conversely, the state charged the client.

Finally, the interviewees pointed out that the judges and prosecutors do not always apply for legal aid in the same way. While certain judges and prosecutors are quite pedantic and strict in terms of legal aid invoice content, others trust the lawyer and do not verify the invoices by themselves. Prosecutors have sometimes wanted to raise arguments concerning legal aid invoices even in cases where they were not obliged to do so. In addition, cases have arisen where the prosecutor has proposed the defence counsel's bill to be reduced, with the judge going along with the prosecutor's proposition. The interviewees suggested that these types of rulings undermine the legal protection of the defendant.

5 CONCLUSIONS

Public legal aid is critical in protecting the less affluent members of society facing legal struggles. Despite the dual supply of legal aid services by private lawyers and public legal aid attorneys – in addition to the highly developed LEI market supporting the public purse – Finland, as other developed countries, is confronted with two conflicting objectives: to increase access to affordable legal aid on one hand and address the persistently rising systemic costs on the other.

⁴⁷ Similarly, in a situation where an indigent person receiving legal aid from public funds is ordered to compensate legal costs to the other party, it is common for the latter one to remain only partially compensated, if at all. In this vein, the interviewees pondered about the possibility to expand the coverage of legal expenses insurance to costs and other forms of compensation paid to the other party.

In this context, we report several key findings. First, this study adds to the literature by providing novel socioeconomic and demographic information on all Finnish public legal aid clients. Importantly, we confirm that legal aid clients are, on average, modestly educated and on low income.

In this vein, a subsequent shortcoming in the Finnish system is that clients' legal costs are at risk to rise unreasonably quickly when the monthly disposable funds are nearing an income limit. For instance, if the monthly disposable funds are 601 euros, i.e., the client exceeds the threshold just by one euro, his or her excess instantaneously increases from 0% to 20%. In consequence, the interviewees indicated that it is relatively common for clients not to perceive legal assistant worthwhile because of the size of the deductible. More severely, the interviews revealed cases where clients have tried to resolve the situation by financing their deductible with debt.

Second, this paper reports several findings of practical relevance and interest for countries that consider increasing the role of private sector in order to distribute the burden and improve the availability of legal aid. In particular, this paper emphasizes the role of careful planning of income limits and fee structure to ensure cost effective yet high-quality legal aid.

Namely, almost every interviewee confirmed that they had dismissed a case because the client was not entitled to legal aid from public funds and thus posed a risk of not being able to pay. However, our results reveal that merely allowing private sector providers to represent legal aid clients and be reimbursed from public funds does not automatically enhance the availability of legal aid. Namely, the interviewees suggested that the complexity of a case quickly reduces the economic attractiveness of representation given the current limits on chargeable working hours and hourly rates. In consequence, private lawyers in Finland are quite often forced to consider whether the legal aid case is worth the burden. Alternatively, insufficient incentives pose a risk of a service that is lower in quality compared to similar services acquired by self-paying clients.

Finally, even if the state reimburses part of the client's legal costs, interviewees noted that clients have failed to pay the deductible for the private provider of legal aid. As a possible solution, the interviewees suggested a legal aid payment system where the private provider charges the state the full amount and conversely, the state charges the deductible from the client.