



## Pro Bono Practices and Opportunities in Finland<sup>1</sup>

### INTRODUCTION

When Finland declared independence from the Russian empire 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 structures and legal systems, including with respect to the provision of legal aid. Due in large part to Finland's comprehensive state system, pro bono work is not widespread or a significant part of the legal culture in Finland.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### The Constitution and Governing Laws

The Constitution is the basis of all legislation and exercise of government power. It provides the fundamental rules, values and principles of Finnish democracy. The latest iteration of the Constitution, which entered into force on March 1, 2000, is not a single law, but rather can be seen as a consolidation of four Constitutional Acts. The Constitution provides that the sovereign power lies with the people represented by the Parliament, with decisional power being divided amongst the Parliament, the Government and the President of the Republic. In addition to the Constitution, regular Acts of Parliament, Presidential Decrees, Government Decrees, Ministry Decrees and various types of other subordinate regulation govern the country and are published in the *Suomen säädöskokoelma*.

##### The Courts

Finland has a dual court system, which includes general courts overseeing civil and criminal law, as well as administrative courts overseeing disputes between private persons and public authorities. General courts are divided into three tiers. District Courts operate as the courts of first instance, with jurisdiction over all civil and criminal cases within their territorially limited districts. There are 27 District Courts.<sup>2</sup> At the appellate level, there are five Courts of Appeal.<sup>3</sup> The Supreme Court in Helsinki acts as the court of final appeal.<sup>4</sup> On the other hand, administrative courts operate on two tiers. Six regional Administrative

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<sup>1</sup> This chapter was drafted with the support of Juha-Pekka Mutanen and Henrik Sajakorpi of Dittmar & Indrenius.

<sup>2</sup> The judicial districts of the District Courts generally follow regional boundaries and the names of the District Courts correspond to the names of the regions. See <http://www.oikeus.fi/tuomioistuimet/karajaoikeudet/en/index/yhteystiedot.html> (last visited on September 4, 2015).

<sup>3</sup> The five Courts of Appeal – Eastern Finland, Helsinki, Rovaniemi, Turku and Vaasa – hear appeals against the decisions of the district courts in their region. See <http://www.oikeus.fi/tuomioistuimet/hovioikeudet/en/index.html> (last visited on September 4, 2015).

<sup>4</sup> The Supreme Court's case law is available on its website, <http://www.kko.fi/> (last visited on September 4, 2015).



Courts<sup>5</sup> deal with claims against administrative acts of public authorities, and the judgments of these courts may be appealed to the Supreme Administrative Court in Helsinki.<sup>6</sup>

Under the Act on Judicial Appointments, judges are appointed by the President of the Republic on recommendation from the Government.<sup>7</sup> The Government is advised by a Judicial Appointments Board, however the Judicial Appointments Board has no jurisdiction regarding the appointment of judges to the Supreme Court or the Supreme Administrative Court. Instead, aspiring judges to these courts of final instance make their own appointment proposals directly to the President of the Republic, who is the sole decision-maker in these instances.<sup>8</sup> In the District Courts, judicial offices are held by laymen judges who hold no legal qualification, known as “Lay Judges,” in addition to legally qualified judges. Lay Judges are appointed by local municipal councils and are most typically employed in serious criminal cases.

## The Practice of Law

### Education

In Finland, advocates, public legal aid attorneys or licensed counsel may all serve as attorneys or counsel. Furthermore, lawyers can be divided into two categories: members of the Finnish Bar Association (advocates or *asianajaja*, and some public legal aid attorneys) and non-members of the Bar (jurists and some public legal aid attorneys). Advocates are required to complete a Master of Laws degree in Finland (but not a master of international and comparative law degree) or complete a law degree outside of Finland that is approved by the Finnish National Board of Education.<sup>9</sup> Advocates must then complete a four-year apprenticeship, two years of which must be spent under the supervision of a law firm or equivalent setting.

### Licensure

The Finnish Bar Association is regulated by the Advocates Act of 1958 (the “**Advocates Act**”), and only its members are entitled to use the professional title “advocate.” In contrast to most legal systems in the European Union, a party to a court proceeding in Finland is not obligated to employ an advocate. Following the Act on Licensed Attorneys (*Laki luvan saaneista oikeudenkäyntiavustajista 715/2011*), which entered into force in January 2013, only advocates, public legal aid attorneys and jurists that have obtained the proper licenses<sup>10</sup> may represent a party to a court proceeding in a general court.

In addition to the academic legal training mentioned above, advocates must also pass an examination in professional ethics and an Advocates Examination offered by the Bar.<sup>11</sup> Advocates must be known to be honest and, in respect of his or her other characteristics and way of life, suitable for the profession of advocate. Lastly, advocates must have their full legal capacity and not be bankrupt.

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<sup>5</sup> The six courts are: The regional Administrative Courts of Helsinki, of Hämeenlinna, of Itä-Suomi, of Pohjois-Suomi, of Turku and of Vaasa. In addition to these six regional ones Ahvenanmaa, ie. The Åland Islands which is a monolingually Swedish-speaking and autonomous region of Finland, has its own Administrative Court (Ålands förvaltningsdomstol). See <http://www.oikeus.fi/tuomioistuimet/hallintooikeudet/fi/index.html> (last visited on September 4, 2015).

<sup>6</sup> Administrative Judicial Procedure Act (Hallintolainkäyttölaki, 586/1996), § 7. The Supreme Administrative Court’s decisions are available on its website, <http://www.kho.fi/en/index.html> (last visited on September 4, 2015).

<sup>7</sup> Act on Judicial Appointments 205/2000, Ch. 2 § 2.

<sup>8</sup> Id. at §§ 5(1)-(2).

<sup>9</sup> Advocates Act 496/1958, § 3(2).

<sup>10</sup> To obtain such license, an individual must (1) hold a Finnish master’s degree in law, other than a master of international and comparative law degree, or completed a law degree outside of Finland that is approved by the Finnish National board of Education; (2) obtain a sufficient amount of experience to act as a trial counsel; (3) be considered as honest and not ill-suitable; and (4) not be bankrupt or have one’s individual legal capacity restricted. However, Chapter 15 Section 2 of the Finnish Act on Procedure (Oikeudenkäymiskaari 1.1.1734/4) provides for a few exceptions to the license requirement.

<sup>11</sup> Id.



Under Section 5 of the Advocates Act, an advocate shall fulfill the tasks entrusted to him honestly and conscientiously 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 governing and executive bodies of the Finnish Bar Association.<sup>12</sup> 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.

Unlike advocates, jurists are not members of the Finnish Bar Association and therefore not subject to all of the above requirements. However, since the beginning of 2014, attorneys that are not advocates or public legal aid attorneys, such as jurists, need a license in order to act as an attorney in the general courts.<sup>13</sup> Licenses to act as an attorney are granted by the Licensed Attorneys Board, subject to the Act on Licensed Attorneys.

With the exception of being a member of the Finnish Bar Association and receiving the title of *asianajaja*, jurists are fully capable of representing clients. Licensed jurists must observe similar ethical rules as advocates and public legal aid attorneys and are monitored by the Disciplinary Board of the Finnish Bar Association and the Licensed Attorneys Board.

Public legal aid attorneys engage in advocacy before courts of law. Public legal aid attorneys have a widely varied practice, often dealing with urgent clients who are experiencing crises in their lives. Most public legal aid attorneys hold the title *varatuomari*, which means that they have completed a judicial traineeship at a District Court and obtained a judicial qualification.

Public legal aid attorneys are appointed by the leading public legal aid attorney, who is appointed by the Minister of Justice. While not required to be members of the Finnish Bar Association, public legal aid attorneys engage in advocacy before courts of law and are obligated to observe proper advocacy conduct in their practice, making them subject to the Bar's disciplinary powers. In all, more than half of these attorneys are members of the Finnish Bar Association.<sup>14</sup>

### Demographics

There are approximately 21,000 lawyers in Finland, and about 75% of Finnish lawyers (or approximately 16,000 lawyers) are members of the Association of Finnish Lawyers.<sup>15</sup> The Association of Finnish Lawyers is the general professional organization of most lawyers in Finland, not only those admitted to the Finnish Bar Association. Finnish lawyers may practice as sole practitioners, in partnerships or in limited companies.<sup>16</sup>

### Legal Regulation of Lawyers

As indicated above, lawyers in Finland are regulated by the Finnish Bar Association, the Advocates Act, Rules of Proper Professional Conduct for Advocates, The Association of Finnish Lawyers and the Licensed Attorneys Board.

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<sup>12</sup> Rules of Proper Professional Conduct for Advocates (*Hyvää asianajajatapaa koskevat ohjeet/Vägledande regler om god advokatsed*), Introduction.

<sup>13</sup> See <http://www.oikeus.fi/en/index/laatikot/vaihtuvateema.html> (last visited on September 4, 2015).

<sup>14</sup> Id.

<sup>15</sup> According to the Association of Finnish Lawyers' website, <http://www.lakimiesliitto.fi/> (last visited on September 4, 2015).

<sup>16</sup> Practicing lawyers may not form partnerships or companies with non-lawyers, unless the Board of the Association of Finnish Lawyers grants a specific permit. See Advocates Act 496/1958, § 5.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The System

The Constitution of Finland provides a right to be heard in a competent court of law.<sup>17</sup> 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, 2002/257 (*Oikeusapulaki/Rättshjälpslagen*), the Act on State Legal Aid Offices, 2002/258 (*Laki valtion oikeusaputoimistoista/Lag om statliga rättshjälpsbyråer*) and various government decrees that have been issued based on these acts.<sup>18</sup> The Public Legal Aid Office, which is under the authority of the Ministry of Justice, is charged with responsibility for legal aid. Legal aid must be applied for at one of the 27 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, legal aid work is undertaken by public legal aid attorneys. Legal aid matters may, however, also be handled by private attorneys, such as advocates and jurists, subject to certain exceptions and requirements as described herein. Legal aid includes legal advice, necessary measures and representation in court or other authorities, and release from certain expenses relating to the case.<sup>19</sup>

The legal aid system is known as a so-called dual system in that legal aid is provided by both public legal aid offices and private attorneys. However, private attorneys only give legal aid in court cases, whereas public legal aid attorneys provide assistance in all kinds of cases.

In criminal proceedings and pretrial 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. Moreover, according to the Criminal Procedure Act, a court may appoint an attorney for the injured party in a criminal investigation involving certain offenses. 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.<sup>20</sup> 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 adjusted accordingly. 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.

### State-Subsidized Legal Aid: Eligibility Criteria

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 EU or the European Economic Area.

<sup>17</sup> FINLAND CONST. 1999/731, § 21.

<sup>18</sup> For example Government Decree on Legal Aid 388/2002 (Valtioneuvoston asetus oikeusavusta /Statsrådets förordning om rättshjälp); Government Decree on Legal Aid Fee Criteria 290/2008 (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 sivutoimistojen ja sivuvastaanottojen sijainnista/Justitieministeriets förordning om förläggningskommunerna för de statliga rättshjälpsbyråerna samt deras filialbyråer och filialmottagningar) and Decree 1089/2011 of the Ministry of Justice on legal aid districts and their relevant districts and the location of legal aid offices (Oikeusministeriön asetus oikeusapupiireistä sekä oikeusaputoimistojen toimipaikoista ja edunvalvontapiireistä/Justitieministeriets förordning om rättshjälpsdistrikten samt om rättshjälpsbyråernas verksamhetsställen och intressebevakningsområden).

<sup>19</sup> Legal Aid Act, Ch. 1, § 1.

<sup>20</sup> Criminal Procedure Act 1997/689, §§ 10-11.

Legal aid is granted for free or against a deductible, on the basis of the financial means of the applicant.<sup>21</sup> The financial means of the applicant are calculated based on the monthly income, necessary expenses and maintenance liability of the applicant and his or her spouse or partner. However, legal aid 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.

Although the merits of success are not a barrier to receiving legal aid, such assistance will not be provided if the matter is (i) of minor importance to the applicant; (ii) it would be manifestly pointless in proportion to the benefit to the applicant; (iii) pleading the case would constitute an abuse of process; or (iv) the matter is based on an assigned right and there is reason to believe that the purpose of the assignment was to receive legal aid.<sup>22</sup>

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.

Companies or associations are not eligible for legal aid. Individual entrepreneurs may receive legal aid on business matters that do not involve a court case only if there are special reasons that require such aid, as decided by the legal aid office.<sup>23</sup>

### Mandatory Assignments to Legal Aid Matters

Ordinarily, legal aid is provided by public legal aid attorneys. However, in matters to be heard in court, a private attorney may voluntarily consent to represent a candidate. In addition, private attorneys may be appointed in cases referred to in section 10 of the Act on State Legal Aid Offices (258/2002); *laki valtion oikeusaputoimistoista*.<sup>24</sup> Only an advocate or licensed attorney referred to in the Act On Licensed Attorneys (715/2011; *laki luvan saaneista oikeudenkäyntiavustajista*) may be appointed as a private attorney.

Private attorneys are paid a reasonable fee for the measures they are required to take based on time spent on the matter as well as travel costs, for their services.<sup>25</sup> In a case heard by a court of law, the court shall determine the fees and compensation payable from state funds to a private attorney. To this end, the work of an attorney can be compensated for a maximum of 80 hours, unless the court determines that continued legal aid is appropriate. In cases not heard by a court, the legal aid office determines the fees and compensation of a private attorney.

Given the generous eligibility criteria for legal aid, full or partial legal aid is available to approximately 75% of the population.<sup>26</sup> The overall budget for legal aid services has maintained a steady level since the 1990s, and in 2014, the legal aid budget for civil and criminal matters was €67.7 million.<sup>27</sup> In terms of access, the legal aid offices deal with some 50,000 legal aid matters every year, and employ

<sup>21</sup> 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> (last visited on September 4, 2015).

<sup>22</sup> Legal Aid Act, Ch. 1, §§ 7(1)-(4).

<sup>23</sup> Id. at § 2(3).

<sup>24</sup> Id. at Ch. 2, § 8(2).

<sup>25</sup> Id. at Ch. 3, § 17(1).

<sup>26</sup> See <http://www.oikeus.fi/en/index/laatikot/Legalassistance.html> (last visited on September 4, 2015).

<sup>27</sup> See [http://www.opensocietyfoundations.org/sites/default/files/eu-legal-aid-finland-20150427\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/eu-legal-aid-finland-20150427_0.pdf) (last visited on September 4, 2015).



approximately 220 public legal aid attorneys.<sup>28</sup> Defense lawyers have a right to attend investigations and police questioning, as well as request additional pre-trial investigative measures. In light of the system's favorable eligibility requirements, steady budget, and extensive access in criminal matters, the waiting time to receive legal aid may vary. Generally, the decision from the legal aid office of whether an applicant qualifies takes one or two days. However, the applicant may then have to wait further before the assigned lawyer can meet with them. In the very early stage of proceedings, suspects may choose not to request legal aid due to the uncertainty surrounding the timing and the possibility that they will have to partially or fully contribute to their services.

## Alternative Dispute Resolution

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. Of note, these other legal services are provided as legal aid only by public legal aid attorneys, not by private attorneys.

Following the Swedish model, the Finnish government has also established Ombudsman offices and agencies where individuals can bring complaints against private companies and authorities. There are numerous ombudsmen, the most prominent of which is the Parliamentary Ombudsman,<sup>29</sup> who ensures that authorities and officials observe the law and fulfill their duties. Anyone, regardless of citizenship, is entitled to turn to the Parliamentary Ombudsman should the complainant believe that an authority, public official or public body has acted in a manner that violates his rights. Other Ombudsman offices monitor compliance with specific laws or policies, such as laws protecting the rights of minorities, women, children and consumers. Furthermore, other agencies are empowered to settle disputes between private persons and undertakings. For example, the Consumer Complaint Board represents consumers and businesses and issues recommendations concerning disputes involving consumer and housing transactions. The services of the Parliamentary Ombudsman and the various Ombudsman offices and agencies are generally free of charge to the complainant. Although many of these offices/agencies issue nonbinding 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.

## PRO BONO ASSISTANCE

Due to the fulsome, well developed and broad system of public welfare services, the need for pro bono services is limited. Nevertheless, the Finnish Bar Association encourages lawyers to become involved in pro bono activities.

### Private Attorneys

There is no mandatory pro bono requirement for lawyers in Finland. However, according to a 2012 survey conducted by the Finnish Bar Association (*Asianajajatutkimus 2012*), 75% of the 651 advocates that responded to the survey discharged their duties either free of charge or gave a considerable discount for their services from time to time.

### Law Firms

Medium sized and large Finnish law firms also engage in some pro bono or charitable work, particularly as the influence of American and English firms continues to grow. Apart from the *Asianajajapäivystys*, pro bono work often involves assisting different charity organizations, foundations and other nongovernmental

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<sup>28</sup> See <http://www.oikeus.fi/oikeusapu/en/index/oikeusavustaja/publiclegalaidoffices.html> (last visited on September 4, 2015).

<sup>29</sup> Details about the Parliamentary Ombudsman program are available at <http://www.oikeusasiames.fi/> (last visited on September 4, 2015).



organizations, 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. Finnish law firms have also established pro bono partnerships that have become more publicly known during the past few years.

## Bar Association Pro Bono Programs

The Finnish Bar Association also runs a program, *Asianajajapäivystys/Advokatijouren*, 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. Currently, *Asianajajapäivystys* operates in 12 locations in Finland for a few hours at a time once or twice a week. In 2013, free advice was given to some 1,300 persons. 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.<sup>30</sup>

## Current State of Pro Bono

As noted above, due to Finland's well developed and broad system of public welfare services, including state funded legal services, Ombudsman offices and other agencies, the need for pro bono services in Finland is limited, and therefore so are the opportunities. However, there are few barriers to pro bono work from a statutory perspective or under the Rules of Proper Professional Conduct. Accordingly, there is room for Finnish law firms to continue to develop more initiatives to encourage participation in pro bono work outside of the state sponsored volunteer opportunities.

## Laws and Regulations Impacting Pro Bono

### "Loser Pays" Statute:

Finland follows the English Rule for attorney fees, in that the party who loses the case is liable for all reasonable legal costs incurred by the necessary measures of the opposing party, unless otherwise provided by the Code of Judicial Procedure.<sup>31</sup>

### Practice Restrictions on Foreign-Qualified Lawyer

The Finnish National Board of Education renders decisions on the eligibility of candidates who complete a law degree outside of Finland, in accordance with the Act on the Recognition of Professional Qualifications (1093/2007 as amended) or the Act on the Eligibility Provided by Foreign Higher Education Degrees for Public Posts in Finland (531/1986 as amended).<sup>32</sup>

### Concerns About Pro Bono Eroding Public Legal Aid Funding

As indicated above, the annual budget for legal aid services has remained steady since the 1990s. Moreover, given the strong public welfare and legal aid programs, there is little risk of pro bono encroaching on legal aid's funding.

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<sup>30</sup> More information about the Bar Association's pro bono initiatives is available at <http://www.asianajajaliitto.fi> (last visited on September 4, 2015).

<sup>31</sup> CODE OF JUDICIAL PROCEDURE, Ch. 21, § 1.

<sup>32</sup> Advocates Act 496/1958, § 3(2).



## Availability of Legal Insurance for Clients

Legal aid is not provided to applicants who have legal expenses insurance that cover their matters.<sup>33</sup> However, in a matter heard in court, the court may grant legal aid in so far as the costs exceed the maximum cover stated in the insurance policy.

## Pro Bono Resources

- Directory of legal aid offices: <http://www.oikeus.fi/> (last visited on September 4, 2015)
- Finnish Bar Association's on call legal assistance program: <http://www.asianajaliitto.fi/asianajotoiminta/asianajajapaivystys> (last visited on September 4, 2015)
- Finnish Refugee Advice Centre (*Pakolaisneuvonta/Flyktrådgivningen*), advising asylum seekers, refugees and other foreigners with regard to their legal rights: <http://www.pakolaisneuvonta.fi/> (last visited on September 4, 2015)
- Finnish League for Human Rights (*Ihmisoikeusliitto/Förbundet för mänskliga rättigheter*), providing wide ranging advice in relation to human rights in general: <http://www.ihmisoikeusliitto.fi/> (last visited on September 4, 2015)
- Feminist Association Union (*Naisasialiitto Unioni/Kvinnosaksförbundet Unionen*), advising on issues related to women's rights: <http://www.naisunioni.fi/> (last visited on September 4, 2015)

## 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 volunteering to provide legal assistance through the *Asianajapäivystys*, or assisting nonprofit foundations and charity organizations in achieving their objectives.

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<sup>33</sup> Legal Aid Act, Ch. 1, § 3(b).