

Country Report Germany: Civil Legal Aid

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This report is a short update to the comprehensive report produced for the ILAG 2001 conference in Melbourne, "Civil Legal Aid And Access To Justice In Germany".

I. Legal Framework

The relevant body of law, the Code of Civil Procedure (Zivilprozeßordnung) and the Law On Legal Advice (Beratungshilfegesetz) has not changed since 2001 when the report to the Melbourne conference was presented. The legal framework therefore has remained unchanged.

II. Policy Issues

Following the general election in September 2002, the re-elected labour government has announced that it intends to cut back the monopoly rights of lawyers to enable the provision of legal services by non-lawyers. The reforms will probably focus on the legalization of legal advice given by altruistic service providers (e.g. for asylum seekers) and by mediators. While this would improve access to justice in general, it would have little effect on the legal aid budget which mainly finances representation in criminal and family law proceedings. Changes to the legal framework of legal aid are, as far as it is known, not on the agenda of the new government.

III. Expenditure

The following tables outline the development of the expenditure on legal aid since the last data was presented in 2001. For further analysis, please refer to the 2001 report.

table 1: Expenditure for civil legal aid for court proceedings – courts of general jurisdiction

(„Prozeßkostenhilfe“) 1990 – 2003 (1 = 1000 DM; 1 € = 1,953 DEM)

(pop. 1 000)	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003 (plan)
B-W 10 476	38 900	42 700	46 300	52 400	61 300	64 900	66 400	65 500	62 840	65 312	67 331	68 355
BAY 12 155	42 837	49 892	50 232	55 782	64 619	71 878	73 905	72 792	74 448	77 170	84 167	n.a.
BER 3 387								21 461	21 899	19 652	20 551	n.a.
BRA 2 601									18 000 (est.)			
BRE 663				5 553	5 802	6 489	6 826	6 535	5 973	6 043	5 560	6 053
HES 6 052					48 700*	52 500*	56 000*	57 200*	54 400*	55 931*	59 550*	n.a.
M-V 1 789	3 019	4 601	5 758	7 580	9 887	10 782	13 099	12 321	13 838	n.a.	n.a.	n.a.
NDS 7 899	48 193*	49 515*	52 462*	59 377*	66 229*	71 439*	74 759*	74 276*	78 172*	82 479*	88 899*	78 120*
NRW 18 000		116 100		136 600		164 400		164 400	167 297	171 060	177 647	n.a.
R-P 4 031	21 010	22 050	23 390	26 130	25 700	29 200	29 000	30 300	31 800	33 880	38 376	38 181
SACHS 4 460	4 769	9 616	13 273	15 233	19 383	23 187	28 324	29 118	29 755	26 728	27 709	25 389
THÜ** 2 449				11 100*	12 008*	12 008*	16 500*	18 000*	24 117*	23 565*	24 613*	21 838*

* sum includes criminal legal aid as the state does not differentiate the expenditure for legal aid into different categories. Experience from other states that do differentiate tells that between 20-25% of the expenditure for legal aid is spent on criminal legal aid and 75-80% on civil legal aid.

** list does not include the federal states of Hamburg, Saarland, Schleswig-Holstein and Sachsen-Anhalt as these were unable or unwilling to provide data for any of the given years. They have a population of 8.2 million, i.e. 10% of the German population.

table 2: Expenditure for Legal Aid For Advice And Representation
(„Beratungshilfe“) 1981 – 1999

	1981	1985	1990	1995	1996	1997	1998	1999	2000	2001	2002	growth 1990- 1995	growth 1995- 1999
B-W 10 476		1 320	1 996	3 096	3 784	4 596	4 892	5 358		5 290	5 775	+ 55 %	+ 73%
BAY 12 155	265	1 044	1 844	3 006	3 615	4 208	4 706	4 879				+ 63 %	+ 62%
BER 3 387	63	501	1 175	1 066	1 056	1 317	1 548	2 173	n.a.	2 554	2 918		+ 104%
BRA 2 601	./.	./.	n.a.	n.a.	n.a.	n.a.	n.a.	817 ¹					
BRE* 663	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	510	748	n.a.	750	846		
HAM* 1705													
HES 6 052	175	1 178	2 148	2 114	2 568	n.a.	n.a.	3 353 ²					
M-V 1 789	./.	./.	n.a.	428	464	635	793	825				n.a.	+ 92,7%
NDS 7 899	222	2 395	4041	4 487	5 319	6 213	7 048	7 418	7 821	8 399	8 649	+ 11%	+65,3%
NRW 18 000	594	4 050	6 423	7 548	n.a.	8 300	n.a.	9 500				+ 17,5%	
RLP 4 031	103	716	1 012	1 265	1 518	1 511	1 699	1 948	n.a.	1 860	1 992	+ 25%	+54%
SAAR 1 072	50	417	604	620	904	1 080	1 026	1 120				+ 2,6%	+ 80%
SACH 4 460	./.	./.	n.a.	1 221	1 448	1 798	2 235	2 711				n.a.	+ 122%
S-AH 2 649	./.	./.	n.a.	599	1 030	1 293	1 699	2 057				n.a.	+ 243%
S-H 2 777	95	1 027	1 667	2 014	2 337	2 477	2 906	2 716				+ 20,8%	+ 35%
THÜ 2 449	./.	./.	n.a.	n.a.	n.a.	n.a.	n.a.	1 082 ³					
total	1 627	12 721	20 910	27 462	n.a.	38 000	n.a.	47 000					

- 1 Brandenburg does not have a statistic for expenditure on legal aid. The expenditure is a best guess, derived from the fact that the average consultation cost was approx. 95 DEM in 1999 in the five ex GDR federal states (where a deduction of 10% is made on all statutory fees paid according to the *Bundesrechtsanwaltsgebührenordnung*). Brandenburg issued 8.605 certificates in 1999 and assumed the average cost was 95 DEM, this results in a gross expenditure of 817.000 DEM.
- 2 Hessen did not provide data on expenditure The number is a best guess, derived from the fact that the average consultation cost was approx. 120 DEM in 1999 on a nationwide basis. Hessen issued 27944 certificates in 1999 and with an assumed average cost of 120 DEM, this results in a gross expenditure of 3.353.000 DEM.
- 3 Thüringen does not have a statistic for expenditure on legal aid for advice and representation. The expenditure is a best guess, derived from the fact that the average consultation cost was approx. 95 DEM in 1999 in the five ex GDR federal states (where a deduction of 10% is made on all statutory fees paid according to the *Bundesrechtsanwaltsgebührenordnung*). Thüringen issued 11389 certificates in 1999 and assumed the average cost was 95 DEM, this results in a gross expenditure of 1.082.000 DEM.