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Legal aid

Německo

1 What costs are involved in legal proceedings and who normally has to bear them?

If you are advised and represented by a lawyer, they are entitled to remuneration for work performed, the level of which depends to a large extent on the value at issue in the case. Court costs are also incurred if a matter is brought before a court. These include not only the fees and expenses of the court, but also costs that a party in need of legal aid has to pay to comply with an action demanded by a court or that are necessary for taking appropriate legal action or putting forward an appropriate defence. A party who does not require legal aid would normally have to bear these costs. If the court rules in that party's favour, they are refunded by the opposing party.

2 What exactly is legal aid?

In Germany, a distinction is made between advisory assistance (*Beratungshilfe*) and legal aid (*Prozesskostenhilfe*).

Assistance with legal advice and representation **outside** court proceedings (advisory assistance) is given to persons in need under the Act on legal advice and representation for people on low incomes (*Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen (Beratungshilfegesetz)*). To **engage in** legal proceedings, persons in need receive legal aid in accordance with the regulations governing legal aid.

3 What are the requirements for legal aid to be granted?

Advisory assistance or legal aid is granted if the person seeking legal services is unable to raise the necessary funds because of their personal and financial circumstances (need) and has no other reasonable opportunities to obtain assistance (e.g. legal expenses insurance, advice from tenants' association or trade union, etc.).

In addition, the intended action to protect their rights must not be frivolous. If legal aid is granted, the intended legal action or defence must also have a sufficient prospect of success. The court deciding on the application for legal aid must consider the applicant's legal position to be correct or at least arguable on the basis of their presentation of the facts and the available documents, and must be convinced, with respect to the facts, that the applicant will be able to provide evidence. If the legal requirements are met, the person in question is entitled to advisory assistance or legal aid.

4 Is legal aid granted for all types of proceedings?

In Germany, a distinction is made between advisory assistance and legal aid (see question 2 above).

Advisory assistance (covering advice and, if necessary, representation) is granted in civil-law matters, including employment law, administrative law, constitutional law and social law. Only advice is given in matters of criminal law and administrative offences law. In matters in which the law of other states is to be applied, advisory assistance is granted if the facts of the case have a connection with Germany. No advisory assistance is granted for cases in the field of tax law.

Legal aid is granted for all types of proceedings relating to civil disputes, for non-contentious proceedings, and for proceedings before a labour, administrative, social or fiscal court (*Arbeitsgericht, Verwaltungsgericht, Sozialgericht or Finanzgericht*). Defendants in criminal proceedings and debtors in insolvency proceedings do not receive legal aid. The regulations on court-appointed defence counsels contain exhaustive special rules for defendants in criminal proceedings. Debtors in insolvency proceedings can obtain a deferment of the costs of the proceedings if they have submitted an application for the discharge of residual debt in addition to the insolvency application. In response to a separate application, the debtor's choice of lawyer willing to provide representation is also assigned by the insolvency court to the debtor in such cases if representation by a lawyer appears necessary.

5 Are there special procedures in cases of need?

There are no such special procedures; the existing options for obtaining advisory assistance and legal aid also cover cases of need.

6 Where can I obtain a legal aid application form?

Application forms for advisory assistance and legal aid can be obtained from local courts (*Amtsgerichten*) and from lawyers.

7 Which documents need to be submitted with the legal aid application form?

The necessary income details must be credibly demonstrated by submitting relevant documents (e.g. payslip or, in the case of self-employed persons, last tax assessment).

8 Where do I submit my application for legal aid?

In Germany, a distinction is made between advisory assistance and legal aid (see question 2 above).

The application for advisory assistance is submitted to the local court in whose district the person seeking legal services has their general legal domicile (place of residence). If that person does not have a general legal domicile in Germany, the local court in whose district a need for advisory assistance arises is competent. It is also possible to approach a lawyer directly for this form of assistance. In that case, the necessary application to the local court must be submitted afterwards, within 4 weeks.

An application for legal aid must be submitted to the court before which the proceedings for which the aid is being requested are taking place or will be brought. That court (and not a social welfare authority, for example) examines the application and decides whether the requirements for granting legal aid have been met.

9 How do I find out whether I am entitled to legal aid?

Information on advisory assistance and legal aid is available from local courts and from lawyers.

10 What should I do, if I am entitled to legal aid?

If you are entitled to advisory assistance or legal aid, you should complete the corresponding form, enclose the necessary documents and submit it to the body referred to under point 8.

11 Who chooses my lawyer, if I am entitled to legal aid?

In Germany, a distinction is made between advisory assistance and legal aid (see question 2 above).

A person seeking legal services can receive advisory assistance from a lawyer of their choice. In the federal states of Bremen and Hamburg advisory assistance is obtained through public legal advice centres. Lawyers are obliged to provide advisory assistance; a request for this form of legal assistance may be rejected only in specific cases for important reasons.

You also have a free choice of lawyer in the case of legal aid. The litigant must select a lawyer who is authorised to represent them before the court. The president of the court selects and assigns a lawyer only if the party concerned cannot find a lawyer willing to represent him or her.

12 Does legal aid cover all the costs of the proceedings?

In Germany, a distinction is made between advisory assistance and legal aid (see question 2 above).

The lawyer is entitled to a fee of EUR 15 from the person whom they have advised in connection with the provision of advisory assistance, which may be waived depending on the circumstances of the person concerned. Divergent agreements relating to remuneration are null and void. The lawyer receives the rest of their remuneration from the public treasury.

In the case of legal aid, all costs of the proceedings are covered, except for expenses of the litigant that were not necessary to protect their rights. No further costs are incurred by the party in need of legal aid.

13 Who bears the other costs, if I am entitled only to limited legal aid?

If the requirements for legal aid have been met, there are no other costs for the litigant. The granting of legal aid means that all necessary costs of the proceedings are covered. However, if the litigant has the financial capacity to contribute part of their income to the costs of the proceedings, they are obliged to refund the corresponding amount, in whole or in part, in instalments to the public treasury that incurred those costs. The personal and financial circumstances can be reviewed up to 4 years after conclusion of the proceedings, and the payment of instalments can be ordered or the amount of existing instalments adjusted. The maximum number of instalments to be collected is 48.

It is possible that legal aid might not cover all of the parts of the proceedings ('partial legal aid'). In such cases, the effect of the legal aid is limited to the part for which it was granted.

14 Does legal aid also cover appeals?

The granting of legal aid does not automatically cover appeals. It ends with the final decision of the court before which proceedings have been brought.

However, it is possible to apply for legal aid again for appeal proceedings. The appeal court will assess whether the party is still in need of aid and whether the appeal is not frivolous and has a prospect of success. The assessment to determine whether the appeal has a prospect of success or is frivolous is not carried out if the opposing party has filed an appeal. If these requirements are met, the litigant is entitled to legal aid.

15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)

In Germany, a distinction is made between advisory assistance and legal aid (see question 2 above).

Advisory assistance can be withdrawn if it is based on false information provided by the party seeking legal services.

Legal aid can be revoked only in the following circumstances:

- if the aid was obtained under false pretences on the basis of incorrect information about the dispute,
- if incorrect information was presented to satisfy the subjective requirements for the granting of aid and the necessary declarations were not provided,
- if the claimed personal and financial circumstances for granting the aid do not apply,
- if the person is in arrears in the payment of instalments, or
- if the person fails to notify a significant improvement in income or other financial circumstances, or fails to notify a new address.

16 Can I contest a refusal to give legal aid?

In Germany, a distinction is made between advisory assistance and legal aid (see question 2 above).

It is possible to lodge an immediate appeal (*sofortige Beschwerde*) against a decision of a local court rejecting an application for advisory assistance.

If an application for legal aid is rejected, the applicant can lodge an immediate appeal against that court decision within a period of 1 month if the value in dispute in the main proceedings exceeds EUR 600. If the value in dispute in the main proceedings does not exceed EUR 600, an appeal is only permitted if the court rejected the granting of legal aid solely on the basis of the requirement relating to personal and financial circumstances.

17 Does the request for legal aid have the effect to suspend the limitation period?

The submission of an application for legal aid will suspend the limitation period of the claim which the action seeks to establish or enforce and for which legal aid is sought. This means that the time during which the limitation period is suspended is not taken into account in calculating the limitation period. The lodging of the application has the effect of suspending the limitation period only if the application for legal aid is directly notified to the opposing party. If notification is made subsequently, the limitation period is not suspended until the date on which the application for legal aid was notified to the opposing party.

Find out more on https://www.bmj.de/SharedDocs/Publikationen/DE/Beratungs_PKH.html

Last update: 21/02/2024

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