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## Legal aid

The right to legal aid allows those who do not have sufficient financial resources to meet the costs of a court case or legal representation. Legal aid systems exist in all Member States of the European Union (EU) in both civil and criminal proceedings.

Imagine a situation in which you are in dispute with somebody in your own country or abroad and you wish to take the case to court or a situation where you are required to defend yourself if the other party takes the initiative of bringing a case against you. Imagine a situation where you are charged with criminal offences in your own country or abroad and cannot afford legal advice and/or representation before a criminal court. In all these examples you may apply for legal aid.

The right to legal aid is enshrined by:

the [European Convention on Human Rights \(ECHR\)](#) - Article 6 (3)(c) of the ECHR guarantees the right to legal assistance where the defendant has insufficient means to pay for legal assistance, and to get free legal aid when the interest of justice so requires.

the [Charter of Fundamental Rights of the European Union](#) - Article 47 of the Charter stipulates that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

### Legal aid in civil proceedings

#### National disputes

A legal aid system exists in all Member States of the EU. If you are in dispute with a company, a professional person, an employer or other person in the **country of your residence** and you do not have sufficient financial resources to meet a court case, you can apply for legal aid under existing national regulations.

A comparison of national schemes on legal aid reveals, however, that there are fundamental differences in the philosophy, organisation and management of the legal aid systems in the Member States. As regards the philosophy of the systems, the broad objective in some States seems to be to make legal services and access to justice generally available, whereas in others, legal aid can be available only to the very poorest.

**Please select the relevant country's flag to obtain detailed national information.**

[ARCHIVED EJN \(in civil and commercial matters\) website](#)

#### Cross-border disputes

If you are in a dispute with a company, a professional person, an employer or other person **abroad** and you do not have sufficient financial resources to bring a court case, you can apply for legal aid on cross-border disputes.

In order to facilitate access to legal aid in civil and commercial matters, the [Directive](#) on legal aid in cross-border issues was adopted.

It covers pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings; legal assistance in bringing a case before the court and representation by a lawyer in court and assistance with, or exemption from, the cost of proceedings.

In order to obtain legal aid in cross-border issues, you have to complete the relevant form for legal aid applications. The Directive provides two forms: one for legal aid applications and one for the transmission of legal aid applications. They are available [here](#) in all EU languages.

#### Legal aid in criminal proceedings

Member States have their own legislation establishing the ways in which legal aid is to be provided in criminal proceedings within their jurisdiction. In the future the European e-Justice Portal will provide detailed information in this area.

As for cross-border cases, there is currently no EU legislation on this subject.

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### Legal aid - Czech Republic

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

In general terms, costs are incurred by the state, the participants in the proceedings and the persons involved in the proceedings (these are mainly the costs of evidence). The costs have two functions: preventive and punitive.

The Code of Civil Procedure ('CCP') contains an illustrative list of costs that may be incurred in civil court proceedings. These are cash expenses of participants and their representatives (e.g. costs of fares, meals and accommodation); the court fee; lost earnings of participants and their legal representatives; costs of evidence (e.g. witnesses' and experts' costs); remuneration and cash expenses of a notary as a court commissioner; remuneration and cash expenses of the administrator; interpreting costs; or remuneration for representation, if the representative is a lawyer, notary or patent attorney. The costs may also include reimbursement of value added tax or a mediator's fee. However, this is not an exhaustive list. Therefore, other costs that were paid by the participant in direct connection with the court proceedings may also be considered as costs of the proceedings.

In principle, participants pay the costs incurred by them personally and by their representatives. If a lawyer has been appointed as the participant's representative or guardian, the state pays the lawyer's cash expenses as well as the remuneration for representation and, where applicable, refunds the value added tax.

The payment of the court fee is regulated in detail by the Act on Court Fees. In an ordinary adversarial procedure, the court fee is usually paid by the claimant. The law also states which court proceedings are exempt from the court fee (e.g. proceedings in custody matters, proceedings regarding judicial care for minors, adoption proceedings, proceedings regarding mutual maintenance obligations of parents and children, inheritance proceedings at first instance, proceedings regarding legal capacity).

It is important to distinguish between the obligation to pay the costs of the proceedings and the obligation to reimburse those costs. A participant in the proceedings pays the costs of the proceedings, especially during the proceedings, as they arise; here, the principle of interest applies (the costs are paid by the person who performs the procedural act or in whose interest the act is performed). Reimbursement of the costs of the proceedings begins only after the costs have been paid. Reimbursement of costs is imposed by a court decision on the basis of the principle of success in the case or the principle of fault.

If there are reasons for special consideration, the court may use its discretionary power when deciding on the costs of the proceedings, and it may refrain from awarding the reimbursement of costs to a participant, either in part or in full. This is a safeguard against a disproportionately harsh impact of the application of the principle of success in the case and the principle of fault.

## **2 What exactly is legal aid?**

One of the main principles in civil proceedings is the principle of equality, the guarantees of which include the right to legal aid. The right to legal aid is granted from the beginning and in all proceedings.

According to the CCP, the following can be considered as legal aid in civil court proceedings:

v Appointment of a representative at the participant's request (Section 30(1) of the CCP);

v Appointment of a lawyer, if this is necessary to protect the participant's interests or if representation by a lawyer is mandatory in the type of proceedings concerned (Section 30(2) of the CCP);

v The participants' partial or full exemption from court fees (Section 138 CCP);

Tangentially, the court's duty to inform may also be considered as legal aid for the participants in the proceedings.

Legal aid provided by the Czech Bar Association is a separate category. This aid is defined by the Act on the Legal Profession, which grants anyone who does not meet the conditions to have a lawyer appointed by a court and who cannot secure the provision of legal services by other means the right to have the Czech Bar Association appoint a lawyer to provide them with legal advice or legal services.

The applicant is thus entitled to free legal advice provided that their average monthly income for the six calendar months preceding the application does not exceed three times the subsistence level of the individual or persons assessed jointly with them under the law governing the subsistence level and the minimum living wage and provided they are not represented in the case in which they seek aid by another lawyer or person authorised to provide legal services (in accordance with Section 2(2)(a) of the Act on the Legal Profession).

If the applicant meets the above conditions, he or she is provided with free legal advice for a minimum of 30 minutes, up to a maximum of 120 minutes of legal advice for each calendar year.

At the same time, the Act on the Legal Profession allows for the provision of one-off legal advice to an unspecified number of persons placed in detention facilities for third-country nationals under the law governing the stay of foreigners in the Czech Republic or in a reception centre under the Act on Asylum, at the initiative of their operator.

According to the Act on the Legal Profession, it is also possible to request the provision of legal services if the income and property conditions of the applicant justify it.

## **3 Do I have a right to legal aid?**

The court may, based on a petition, exempt a participant in the proceedings (or an enjoined party) from the court fee, if the participant's circumstances justify this and if the application is not arbitrary, obviously doomed to fail or an obstruction of the law.

Both natural and legal persons may be exempted.

A participant in the proceedings must not be prevented from exercising or defending their rights in court simply because of their unfavourable financial situation. The court takes into account, in particular, the applicant's overall financial situation, the amount of the court fee, the costs likely to be required to present evidence and the nature of the claim. For natural persons, it takes into account their social conditions, health status, etc. For legal persons and natural persons who are entrepreneurs, it also takes into account the nature of their business or other activities, the status and structure of their assets and their ability to pay.

An application that is obviously doomed to fail or obstruction of the law means, in particular, a situation where it is already clear from the factual allegations of the applicant that their case cannot be satisfied. An arbitrary exercise or obstruction of the law means, in particular, a malicious exercise of a right or a clear attempt to delay fulfilling what is clearly a binding obligation.

If a participant meets the conditions for exemption from the court fee and if it is necessary in order to protect their interests, the court appoints a representative at their request. However, the right to have a representative appointed does not arise automatically if the proceedings or the participant are exempt from the court fee by virtue of law (i.e. under the Act on Court Fees). Even in these cases, the above conditions for exemption from court fees under the Code of Civil Procedure must be met. A lawyer will be appointed as a representative if this is necessary to protect the interests of the participant or if representation by a lawyer (or a notary) is mandatory in the proceedings in question.

Such a participant cannot be required to pay an advance on the costs of evidence which they have themselves submitted or which were ordered by the court concerning the facts alleged by the participant (or in their interest, Section 141(1) of the CCP), nor may the participant be required to reimburse the costs incurred by the state (Section 148(1) of the CCP). Cash expenses and remuneration for representation are paid to the appointed lawyer by the state.

A participant's petition for exemption from court fees may be filed at the same time as the action (motion to commence proceedings) or at any time during the proceedings until the final decision of the court. The court may appoint a representative before the proceedings, if the future participant intends to bring an action with the assistance of a representative.

The court decides on the petition for exemption from court fees by a ruling against which an appeal is admissible.

In the event the court rejects the application for the appointment of a representative, the applicant may request that a lawyer be appointed by the Czech Bar Association. In such a case, the applicant is entitled to free legal advice provided that his or her average monthly income for the six calendar months preceding the application does not exceed three times the subsistence level of the individual or persons assessed jointly with them under the law governing the subsistence level and the minimum living wage and provided that they are not represented in the case in which they seek aid by another lawyer or person authorised to provide legal services (in accordance with Section 2(2)(a) of the Act on the Legal Profession).

Another possibility is to use the applicant's right to be provided legal services, if the applicant's income and property conditions justify it. In this case, too, the applicant turns to the Czech Bar Association.

## **4 Is legal aid granted for all types of proceedings?**

Legal aid under the CCP applies to all proceedings governed by the CCP.

The provision of legal aid by the Czech Bar Association also applies to situations other than proceedings before public authorities in the form of legal proceedings, administrative proceedings and proceedings before the Constitutional Court.

## **5 Are there special procedures in cases of need?**

There are no specific procedures in such cases.

## **6 Where can I obtain a legal aid application form?**

Forms are regulated by Instruction of the Ministry of Justice No 4/2017 of 23 October 2017, Ref. No 12/2017-OJD-ORG/36. Sample forms for both natural and legal persons (Declaration of personal, property and earnings situation for exemption from court fees and appointment of a representative and Declaration of a legal person on property situation and other decisive facts for exemption from court fees and appointment of a representative) are available on the website of the Ministry of Justice of the Czech Republic.

Forms related to the submission of an application for legal aid provided by the Czech Bar Association are annexed to the Decree of the Ministry of Justice of the Czech Republic No 120/2018 establishing application forms for the appointment of a lawyer and the form requesting the provision of one-off legal advice. They are available on the Czech Bar Association's website.

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

All documents that must be attached are listed directly in the form in question. These documents may include the following: a confirmation from the employer regarding income from employment or income from work agreements outside the employment relationship; a final and conclusive payment assessment from the tax authority (income from business and other self-employed activities); a final and conclusive decision on being granted a benefit or confirmation from the payer of this benefit (income from material and social security); or other final and conclusive tax administration payment assessments (other income).

#### **8 Where do I submit my application for legal aid?**

You can submit a petition for an exemption from court fees to the court conducting the proceedings for which you are seeking the exemption. The court of first instance decides on the petition, even if an exemption is sought for the proceedings after an appeal has been lodged.

You can submit an application for the appointment of a lawyer by the Czech Bar Association:

- a) in writing to the address of the Czech Bar Association, Brno branch, nám. Svobody 84/15, 602 00 Brno; or
- b) electronically with a recognised electronic signature to [epodatelna@cak.cz](mailto:epodatelna@cak.cz); or
- c) to the CBA's data box – data box ID n69admd.

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

The law (Section 5 of the CCP) gives courts a general duty to inform and thus provide participants with information on their procedural rights and obligations. The court is obliged to inform the participant about the right to file a petition for exemption from court fees or for the appointment of a representative.

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

See the answer in the section: Am I entitled to legal aid?

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

The court decides on the appointment of a representative based on the participant's petition. If it is necessary in order to protect the participant's interests or if representation by a lawyer or notary is mandatory in the proceedings concerned, the court will appoint a lawyer as a representative. The court will appoint a specific lawyer who is obliged to provide legal services unless the lawyer has a legal reason to refuse (such as a conflict of interest).

Decisions on applications for legal aid provided by the Czech Bar Association are a matter for the President of that Association. The President of the CBA has entrusted the director of the CBA's branch in Brno to represent him in the exercise of this power.

For the purposes of appointing a lawyer, the Czech Bar Association maintains a list of lawyers who have agreed to provide the legal aid described above. When appointing a lawyer to provide such legal services, the Czech Bar Association must ensure that lawyers are appointed fairly and with regard to the nature and complexity of the case.

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

See the answer in the section: What are the costs of court proceedings and who usually bears them?

The applicant must pay a fee of CZK 100 to the Czech Bar Association for processing the application for legal aid provided by that Association. Holders of ZTP (severe health disability) or ZTP/P (severe health disability requiring special care) cards or persons receiving benefits for assistance in material need are exempt from this fee.

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

The court may also grant an exemption from court fees only in part or only for part of the proceedings (e.g. only for proceedings in the first instance) or only for certain court fees. The participant is obliged to cover the remaining part of the court fees.

If a lawyer has been appointed as the participant's representative or guardian, the state pays the lawyer's cash expenses as well as the remuneration for representation and, where applicable, refunds the value added tax.

#### **14 Does legal aid also cover appeals?**

Unless the court decides otherwise, the exemption from court fees applies to the entire proceedings, i.e. until a final and conclusive decision is issued. The exemption from court fees applies both to proceedings at first instance and to appeal proceedings (regular remedial measure). However, proceedings on extraordinary remedial measures (review of an appeal, action to reopen proceedings, action for annulment) are not automatically exempted and the participant may file a new petition for exemption from court fees.

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

If the participant's situation changes in such a way that the exemption from court fees is no longer justified, or if the court subsequently finds that the actual situation of the participant did not justify the exemption already at the time it was granted, the court will withdraw the exemption. Such a measure has retroactive effect only if the court expressly so decides. The court may withdraw the exemption only until the final conclusion of the proceedings.

However, a mere change in the rules for assessing the applicant's situation, or a change in the court's opinion as to whether the application is arbitrary, obviously doomed to fail or an obstruction of the law is not a reason for withdrawing the exemption from court fees.

In the case of legal aid provided by the Czech Bar Association, the Czech Bar Association will revoke the appointment of a lawyer if during the provision of legal services by that lawyer in the relevant matter it is established that the client's income and property situation did not justify the provision of legal services. The Association will also revoke the appointment of a lawyer if, during the provision of legal services by that lawyer, it becomes apparent in the relevant case that the client's income and financial situation has changed such that the provision of legal services is no longer justified; the Association will revoke the appointment of a lawyer at the time of the change in that situation. Even in this case, the lawyer is obliged to take all urgent actions for a period of 15 days from the day on which their appointment to provide legal services was revoked, so that the client's rights or legitimate interests are not harmed. This does not apply if the client informs the lawyer in writing that they do not insist on this obligation being fulfilled.

#### **16 Can I contest a refusal to give legal aid?**

The decision whether to accept your application for exemption from court fees, or to withdraw that exemption, is up to the court. That decision will take the form of a ruling. You can appeal against that ruling, unless it was made at first instance by the Court of Appeal, in which case it is final.

The President of the Czech Bar Association (or the director of the CBA's branch in Brno authorised to act on his behalf) decides on the appointment of a lawyer by the Czech Bar Association in administrative proceedings. An administrative appeal may be brought against the decision.

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## Legal aid - Germany

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

If you are advised and represented by a lawyer, he or she is 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 to take appropriate legal action or put 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 citizens 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 Do I have a right to legal aid?

Advisory assistance or legal aid is granted if the person seeking legal services is unable to raise the necessary funds because of his or her 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 his or her 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 his or her presentation of the facts and the available documents, and must be convinced, with respect to the facts, that he or she 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 regulatory 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.

### 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 his or her general legal domicile (place of residence). If he or she 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.

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 his or her 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 only be rejected 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 him or her before the court. The president of the court only assigns a lawyer 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 €10 from the person to whom he or she grants 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 his or her 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 his or her 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 his or her income to the costs of the proceedings, he or she is obliged to refund the corresponding amount in instalments to the public treasury that incurred those costs.

#### **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 the appeal is not frivolous and has a prospect of success. 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 only be revoked in the following circumstances:

- if the aid has been obtained under false pretences on the basis of incorrect information about the dispute,
- if incorrect information has been presented to satisfy the subjective requirements for the granting of aid and declarations have not been provided,
- if the claimed personal and financial circumstances do not apply,
- if the person is in arrears in the payment of instalments.

#### **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 objection (*Erinnerung*) 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 (*sofortige Beschwerde*) against that court decision within a period of one month, if the value in dispute in the main proceedings exceeds €600. If the value in dispute in the main proceedings does not exceed €600, an appeal is only permitted if the court has rejected the granting of legal aid solely on the basis of the requirement relating to personal and financial circumstances.

Further information is available at [https://www.bmjv.de/DE/Startseite/startseite\\_metaNav\\_node.html](https://www.bmjv.de/DE/Startseite/startseite_metaNav_node.html)

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### **Legal aid - Ireland**

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

#### **2 What exactly is legal aid?**

The Legal Aid Board provides legal advice and legal aid in civil cases to persons who satisfy the requirements of the Civil Legal Aid Act, 1995 and Regulations made thereunder.

Legal aid means representation by a solicitor or barrister in civil proceedings in the District, Circuit, High and Supreme Courts. Proceedings before tribunals are excluded except for the purposes of asylum cases. Advice and assistance can, however, be provided to persons who are contemplating taking proceedings before any tribunal.

Legal advice is any written or oral advice given by a solicitor of the Board or by a solicitor or barrister engaged by the Board on the application of Irish law to any particular circumstances which have arisen in relation to the person seeking legal services.

#### **3 Do I have a right to legal aid?**

The costs involved in a trial vary depending on the Court, the proceedings involved and the complexity of the case.

If you satisfy the means test and you depend on social welfare payments or your disposable income is less than €8,300 then your contribution will be calculated as follows:

If you apply for legal advice - one tenth of the difference between your disposable income and €8,300, subject to a minimum contribution of €6 and a maximum of €100.

If you apply for legal aid - €35 plus one quarter of the difference between your disposable income and €8,300.

If you apply for legal aid and your disposable capital is more than €3,200 you may have to pay a capital contribution. A capital contribution is not payable for legal advice.

#### **4 Is legal aid granted for all types of proceedings?**

Provided that the proceedings are within the Irish jurisdiction, applicants from abroad, who satisfy the financial eligibility and merits test laid down in the Act and Regulations, will qualify for legal aid in Ireland.

Although most Applicants for legal aid are resident in Ireland, it is possible for a person who resides outside of Ireland, whether an Irish citizen or not, to apply for legal aid and/or advice in Ireland, provided that person seeks legal aid or advice about a legal matter governed by Irish Law and usually if legal aid is given to a person residing outside of Ireland where real or personal property is in dispute such property is located in Ireland. In the same way as Irish Applicants need to undergo a means test to determine eligibility for legal aid, persons residing outside of Ireland also are required to undergo the same financial eligibility assessment.

Legal assistance is provided without application of means test eligibility criteria in Court proceedings instituted under the Child Abduction and Enforcement of Custody Orders Act 1991 and under the Maintenance Orders Act 1994 (where recovery of maintenance in reciprocating jurisdiction is concerned).

In general, legal advice is not provided where it would be possible for the applicant, without hardship, to obtain legal advice outside the Act. This would apply generally where services are available from another source e.g. advice agencies or another state body.

Advice on matters of criminal law is outside the scope of the Act except for advice to complainants in "rape" cases.

The Board must be satisfied before legal aid is authorised that it is reasonable to take or defend proceedings, having regard, for example, to the legal merits of the case and the likely outcome. The criteria include: prospects of success; reasonable grounds for taking or defending proceedings; availability of any method, other than court proceedings, for dealing satisfactorily with the problem (e.g. mediation or negotiation of a settlement); ability of the legally aided person to obtain legal representation outside the Act (e.g. possibility of costs being met by insurance company, etc.).

#### **5 Are there special procedures in cases of need?**

Consideration is given as to whether applicants should be dealt with otherwise other than in accordance with the general rule under which appointments to see solicitors are given to applicants; that is, in strict order of the date on which applicants' names are placed on the waiting list for legal services. Priority will be given to new applicants seeking legal services in the following categories of cases:

child abduction proceedings

where there is a real danger of children being taken out of the jurisdiction without the consent of the applicant

child care proceedings

domestic violence

where, under the Statute of Limitations, there is a danger that the time limits for issuing proceedings may expire unless immediate action is taken

where there is a danger of time limits in other legislation expiring

where there is a danger that assets may be dissipated so that they would be unavailable to meet the claims of the applicant.

#### **6 Where can I obtain a legal aid application form?**

A person seeking legal services can apply at any one of the Law Centres by calling in, telephoning, or writing to the Law Centre which is nearest in location to where the Applicant resides.

If any enquiry is made by telephone, the Applicant is requested to call to that Law Centre to apply in person so that a written form of application may be completed, and a means assessment carried out to determine whether the Applicant is financially eligible for legal aid. A postal application may be made and is usually appropriate if the Applicant cannot easily call in person to a Law Centre.

Legal assistance is provided without application of means test eligibility criteria in Court proceedings instituted under the Child Abduction and Enforcement of Custody Orders Act 1991 and under the Maintenance Orders Act 1994 (where recovery of maintenance in reciprocating jurisdiction is concerned).

A list of the addresses and telephone numbers of all the Law Centres, full-time and part-time, is available on the Board's [Website](#).

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

An application for Legal Services Form LAA3 should be fully completed including a statement "as to the subject matter" that is the legal problem in respect of which the Applicant seeks legal services, and signed by the Applicant.

The Applicant should also complete and sign the Means Test Forms.

#### **8 Where do I submit my application for legal aid?**

A list of the addresses and telephone numbers of all the Law Centres, full-time and part-time, is available on the Board's [Website](#).

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

Financially eligible Applicants are offered an appointment to see a Solicitor in accordance with the waiting list procedure, or under the established categories of priority subject matters. Usually an appointment is offered to the Applicant with one of the Solicitors employed by the Legal Aid Board and based in one of its offices.

The Applicant pays the legal advice contribution before attending the first appointment and receives a receipt for same.

At the first appointment the Solicitor will explain that if the Applicant requires representation by a Solicitor in instituting or defending proceedings that a legal aid contribution will become payable on the granting of a legal aid certificate.

Applications for a legal aid certificates may require additional information. Depending on the nature of the case this additional information may include the following:

Medical records/reports

Copies of statements and/or reports obtained or prepared by the Gardai

Copies of any contracts.

If, on receipt of all necessary information it is considered that an application for legal aid does not meet the provisions of the Civil Legal Aid Act, 1995 and the 1996 Regulations a letter of refusal will issue from the solicitor.

This letter will state the grounds on which the application is refused and the relevant Section(s) of the Civil Legal Aid Act and/or Regulations. The letter also informs the applicant of the right to have the decision reviewed and/or appealed to an Appeal Committee of the Board.

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

When an applicant for legal aid meets the requirements of the Act and Regulations, a Legal Aid Certificate is granted to provide representation by a solicitor and, if necessary, a barrister in certain civil proceedings in the District, Circuit, High and Supreme Courts.

A legal aid certificate only authorises legal services for the proceedings or subject matter stated on it. The issuing of a legal aid certificate to an applicant does not mean that the applicant is legally aided in other matters. If an applicant requires legal aid for more than one subject matter a separate application must be made.

Applications for a legal aid certificate are made by a solicitor in a law centre after consultation with an applicant.

Section 29(1) of the Act provides that a person shall not qualify for legal aid or advice unless he or she pays a contribution. This contribution is determined by a financial assessment based on the information provided by the applicant in their Statements of Means and Capital. Where a person has no capital assets the minimum amount payable for legal aid is €35 and the maximum amount is €1,210.

The full contribution should be paid on returning the legal aid certificate and before legal services are provided. The Board may, in exceptional circumstances, allow the applicant to pay by instalments. However, the full amount due must be paid within twelve months and prior to the finalisation of the proceedings.

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

If the Applicant on application expresses a preference to be represented by a particular Solicitor in the Law Centre, the Managing Solicitor will take the Applicant's wishes into account when deciding what Solicitor to allot to that Applicant. Other circumstances will also be taken into account by the Managing Solicitor in deciding what Solicitor to allot, for example whether a Solicitor requested by the applicant would be available to represent the client on a particular Court date. If the Solicitor requested by the Applicant already had a commitment to another client at a different location on the date of the Applicant's case then it would be necessary for the Managing Solicitor to allot to the Applicant a Solicitor to represent him/her other than the Solicitor of his choice.

If the Applicant previously was represented by a Solicitor of the Law Centre then it would be usual for the Managing Solicitor to allot the same Solicitor to provide legal services to the same client for the new subject matter. An Applicant does not have an absolute right to consult or be represented by the Solicitor of his choice but an Applicant's wishes will be taken into account usually by a Managing Solicitor when a decision is made as to what Solicitor to allot to an Applicant. If an Applicant had a preference to be represented by a Solicitor of his/her own sex then in so far as possible the Managing Solicitor would endeavour to ensure that an Applicant's preference in this regard be taken into account.

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

Payment of the Legal Aid Contribution specified on the Certificate will cover all costs involved in proceedings. However, costs and general damages awarded to you as a result of court proceedings or a settlement reached out of court are payable to the Legal Aid Board. The Board will be entitled to deduct the costs

it has incurred from any monies that you receive subject to certain limited exceptions. This also applies to settlements made to a legally aided person as a result of matrimonial proceedings, Separation Agreements or Judicial Separation. If the total cost incurred by the Board in providing legal services is less than the total amount paid by you, or on your behalf, by way of contribution and by virtue of the recovery of costs or damages or when account is taken of a charge on property, the balance will be refunded to you.

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

### 14 Does legal aid also cover appeals?

A legal aid certificate provides legal services for the proceedings or subject matter stated on it. When the proceedings or subject matter stated are completed the certificate expires. An applicant who requires additional services that may relate to the original subject matter may apply for an amendment to the legal aid certificate or a new certificate. The individual circumstances of the case will determine whether an amendment or new certificate is required and the solicitor will advise.

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

If you furnish incorrect information or fail to disclose any material fact (for example, in relation to a change in your financial circumstances), or if you are behaving unreasonably, legal advice or legal aid or both may be withdrawn and you may be liable for the full costs incurred on your behalf.

### 16 Can I contest a refusal to give legal aid?

An applicant who is aggrieved by any decision of the Board may request a review of the decision. If the applicant wishes to have the decision reviewed, further information in writing must be submitted for consideration together with an opinion from the applicant's solicitor as to whether the decision should stand. Applicants may request a review of a decision through the Law Centre.

An applicant who is aggrieved by any decision of the Board or a review of any decision of the Board may appeal that decision to a committee of the board. If the applicant wishes to appeal the decision, an appeal must be lodged to an Appeal Committee of the Board. Applicants may request an appeal of a decision either through the law centre or directly to the Board.

The submission of further information for the purpose of review or the lodgement of an appeal must be made within a period of one month from the date on which an applicant was informed that they were not entitled to the service applied for.

The Appeal Committee comprises of a chairperson and four other members, two of whom prior to their appointment to the Board were either practising barristers or practising solicitors. The committee shall consist of persons who were not involved in the original decision.

## Further information

Further information including a list of addresses and telephone numbers of all the Law Centres is available on the Board's [Website](#).

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## Legal aid - France

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

The costs incurred in proceedings vary depending on the nature and complexity of the case, the procedure and the court with jurisdiction to decide on the case.

Costs fall into three categories:

- lawyer's fees, which are not subject to a fixed scale and can therefore be agreed between lawyers and clients; in principle these are payable by clients unless they are eligible for legal aid;
- expenses, listed specifically in Article 695 of the Code of Civil Procedure (*Code de procédure civile*) and comprising mainly:
  - a. representation emoluments payable to lawyers or certain public officials (*officiers publics* or *officiers ministériels*); emoluments are separate from fees;
  - b. court costs payable to bailiffs;
  - c. costs of experts' reports and investigation;
  - d. any witness allowances, based on a scale;
  - e. counsel's hearing fee;
  - f. disbursements: costs relating to the fixed-rate expenses advanced by professionals for the requirements of the proceedings.

Costs are payable by the losing party. That principle is laid down in Article 696 of the Code of Civil Procedure. However, judges may give a reasoned decision ordering another party to pay all or part; in the latter case they divide the costs.

- other costs incurred in court by the parties to the proceedings are in principle payable by those parties unless the judge decides otherwise. The judge may exercise that power in both criminal and civil cases, with due regard to equity or the economic situation of the convicted party. Judges may even rule of their own motion that such an order is not necessary.

In criminal cases, the state pays the court fees. The convicted person is required to pay a fixed fee for the proceedings, the amount of which depends on the offence.

### 2 What exactly is legal aid?

The legal aid system (which has replaced the legal assistance system organised under the law of 1972) is provided for by Law No 91-647 of 10 July 1991 on legal aid (*loi no 91-627 du 10 juillet 1991 relative à l'aide juridique*), supplemented by Decree No 91-1266 of 19 December 1991. It covers:

- legal aid: full or partial financial aid granted by the state for proceedings in trial or appeal courts, enforcement of decisions and settlements before the commencement of proceedings;
- aid for assistance by a lawyer in criminal proceedings which might be alternatives to prosecution (settlement, mediation), and assistance by a lawyer when in police custody and before a prison disciplinary board;
- and access to the law (information, advice, free legal consultation).

Legal aid allows the recipient to receive free assistance from a lawyer or other legal official (e.g. bailiff, solicitor, auctioneer) and to be exempted from all or part of the court costs.

### 3 Do I have a right to legal aid?

Legal aid is granted by the legal aid office (*bureau de l'aide juridictionnelle*) set up at Regional Courts (*Tribunal de grande instance*), replaced by Combined (Regional and District) Courts (*Tribunal judiciaire*) from 1 January 2020, subject to several financial, nationality, residence and admissibility criteria.

- Financial criteria

You are eligible for legal aid if the average of all assets you received in the previous calendar year (not including family allowances and certain social security benefits) does not exceed a certain threshold established annually by law.

For instance, legal aid applications lodged in 2019 are considered in the light of the assets received in 2018. For a single person, the ceiling for monthly assets from 1 January 2019 must be less than €1,032 for full legal aid and less than €1,547 for partial legal aid. In both cases an additional €186 is applied for the first two dependants and €117 for three dependants or more, thus raising the asset threshold.

Anyone whose assets exceed those thresholds may be granted legal aid as an exceptional case if their action appears particularly deserving in view of the subject of the dispute or the foreseeable cost of the proceedings (Article 6 of the Law of 1991).

Persons receiving benefits from the National Solidarity Fund (*Fonds National de Solidarité*) or Active Solidarity Income (*Revenu de Solidarité Active*) or wishing to assert rights to military invalidity pensions and victims of war are not required to declare their assets.

Aid applicants who are victims of the most serious crimes (attacks with intent to endanger life or cause bodily harm) and their beneficiaries are also exempt from declaring their assets.

- Nationality criterion

You are eligible for legal aid if you are a French national or a national of one of the EU Member States (with the exception of Denmark) or a foreign national habitually and legally resident in France.

You can also be granted legal aid for a case in a French court if you are a foreigner not resident in France but are a national of a state having an international or bilateral agreement with France making its nationals eligible for legal aid.

- Residence criterion

Apart from the cases mentioned above, habitual and legal residence in France is the general rule.

However, it is not mandatory in exceptional cases if the applicant's situation appears particularly deserving in view of the subject of the dispute or the foreseeable cost of the proceedings.

Foreigners are also granted legal aid without a residence condition when they are minors, assisted witnesses, persons under investigation, charged, accused or convicted or parties claiming damages in criminal proceedings, or when they are the subject of proceedings concerning entry and residence in France.

- Admissibility criterion

Legal aid is granted to persons whose actions do not appear manifestly inadmissible or unfounded. This condition is not applicable to defendants in the action, persons with civil liability, assisted witnesses or persons charged, accused or convicted.

Claimants are refused legal aid for appeals if no reasonable ground of appeal can be established.

When legal aid has been refused on that basis and the judge nevertheless allows the action brought by the claimant, the claimant is granted a refund of the costs, expenses and fees they have incurred or paid, up to the amount of the legal aid to which they would have been entitled in view of their assets.

#### 4 Is legal aid granted for all types of proceedings?

Legal aid is granted to claimants and defendants in non-contentious or contentious proceedings in any court and for the hearing of minors.

It may be granted for all or part of the proceedings and for the purpose of reaching a settlement before the commencement of proceedings.

Legal aid may also be granted to secure enforcement of a court decision or any other writ of execution, including those from other EU Member States, with the exception of Denmark.

#### 5 Are there special procedures in cases of need?

Legal aid may be granted provisionally when the proceedings jeopardise the essential living conditions of the person concerned, particularly in the case of enforcement involving seizure of property or eviction. In such cases it may be granted by the head of the legal aid office or by the competent court or its president.

In criminal cases, the procedure allows for legal aid to be granted in urgent circumstances (for instance police custody, examination at first appearance, immediate trial). It is granted during the proceedings and covers all acts by the court.

#### 6 Where can I obtain a legal aid application form?

Legal aid application forms are obtainable from the Regional Court (*Tribunal de grande instance*), the District Court (*Tribunal d'instance*) (both replaced by the Combined Court (*Tribunal judiciaire*) from 1 January 2020) for your place of residence or the place where the case is to be heard.

The application form can also be downloaded by clicking on the access to the form (*'accéder au formulaire'*) link.

If you are a French national living abroad, the form is also obtainable from consulates or at the:

Bureau du droit de l'Union, du droit international privé et de l'entraide civile, direction des affaires civiles et du sceau, Ministère de la Justice, 13 place Vendôme, 75042 Paris Cedex 01.

If you are a foreigner not resident in France, you can obtain the legal aid form from the central authority designated by your country to transmit international legal aid applications. Most countries have designated their Ministry of Justice. France has designated the above department at the Ministry of Justice, the *Bureau du droit de l'Union, du droit international privé et de l'entraide civile*, to process applications in civil, commercial or administrative cases by residents of Member States of the Council of Europe which are party to the European Agreement of 27 January 1977 on the Transmission of Applications for Legal Aid with responsibility for receiving and transmitting applications.

If you are a national of an EU Member State, with the exception of Denmark, and you are resident in France or your case is being heard in a French court, you might be eligible for cross-border legal aid in civil and commercial cases in accordance with Council Directive 2003/8/EC of 27 January 2003. The office responsible for processing those applications in France is the:

Bureau de l'aide juridictionnelle, Service de l'accès au droit et à la justice et de l'aide aux victimes, Ministère de la Justice, 13, place Vendôme, 75042 PARIS Cedex 01.

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

The legal aid application form must be completed and accompanied by the supporting documents specified in the form, relating particularly to financial resources (your own and those of the persons habitually living with you), the subject of your application and the court dealing with the case.

#### 8 Where do I submit my application for legal aid?

You can submit your application to the legal aid office for your place of residence or the office for the district in which the court hearing the case is located.

There is a single legal aid office in every Regional Court (replaced by the Combined Court (*Tribunal judiciaire*) from 1 January 2020), which processes legal aid applications for cases to be heard in that court or those within its district: Combined Court, Administrative Court (*Tribunal administratif*), Employment Tribunal (*Conseil de prud'hommes*), Court of Appeal (*Cour d'appel*) and Administrative Court of Appeal (*Cour administrative d'appel*).

As an exception to the single office rule, each of the following courts also has an office:

- the Court of Cassation (*Cour de cassation*);
- the Council of State (*Conseil d'état*), the highest administrative court;

• the National Right of Asylum Court (*Cour nationale du droit d'asile*).

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

You will be notified of the decision by the legal aid office at your place of residence.

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

You should contact your lawyer (or legal official, e.g. bailiff, expert, solicitor) or the person designated for you in order to explain your case and give them all the information and documents required for their work.

If you have been awarded partial legal aid, you must agree with them the additional fee you will pay them. That amount must be shown in the agreement you will have to sign.

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

All individuals may appoint a lawyer of their choice.

If you are appointing your own lawyer, you must then give their name on the legal aid application.

However, if you do not know of a lawyer, one will be appointed for you by the chair of the bar at the Regional Court (Combined Court).

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

If you are granted full legal aid, that covers all court costs, including the direct payment to the lawyer or other legal officials (bailiffs, experts, solicitors, etc.).

That payment is calculated according to a scale or rate depending on the type of proceedings.

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

Depending on your assets, you can be granted partial legal aid at two rates, 55% and 25%, payable by the state. You are still liable for an additional non-fixed fee, determined by agreement between you and the lawyer, under the supervision of the chair of the bar to whom you may refer any dispute.

As with full legal aid, eligibility for partial legal aid exempts the recipient from all other necessary court costs.

### **14 Does legal aid also cover appeals?**

• If you are a defendant and you are granted legal aid, it is awarded automatically for any appeal brought by your opponent, provided that your assets have remained the same or that they do not exceed the threshold.

You must nevertheless expressly complete a further application to the legal aid office of the Regional Court (Combined Court) in the district in which the Court of Appeal is sitting. That court must ensure that your assets still fall below the limit.

• If you are a claimant you must lodge a further application as above. However, your eligibility for legal aid will depend on two conditions: as well as the amount of your assets, the admissibility of your action will also be considered.

• If you have already been granted legal aid for previous proceedings and you wish to apply for a review, the previous decisions on eligibility no longer apply. You must lodge an application with the legal aid office at the Court of Cassation, which will consider the admissibility of the proposed action as well as the amount of your assets.

In appeals, claimants are refused legal aid if no reasonable ground of appeal can be established.

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

The right to legal aid may be withdrawn completely or in part (Article 50 of the Law of 1991) during or after the proceedings in the following circumstances:

- if the aid was obtained on the basis of incorrect declarations or documents;
- if, during the proceedings, you come into possession of assets such that, if they had existed at the time the legal aid application was made, it would not have been granted;
- when the final decision procured assets for you such that, if they had existed at the time the legal aid application was made, it would not have been granted;
- when the proceedings for which you have used the legal aid have been found dilatory or an abuse of process.

### **16 Can I contest a refusal to give legal aid?**

You may appeal against the decision if you are refused legal aid.

The appeal is to be brought:

- by applying to the legal aid office for a review of your application if the reason for the refusal concerns the amount of your assets;
- for other grounds for refusal, by lodging an appeal against the refusal decision with the president of the Regional Court (replaced by the Combined Court (*Tribunal judiciaire*) from 1 January 2020) to which the legal aid office that took the decision is attached. In this second instance, the new decision is not open to appeal.

Legal aid may be granted retrospectively if a party has brought an action and won the case when aid was refused on the ground that the action did not have a reasonable chance of succeeding.

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## **Legal aid - Croatia**

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

Article 151 of the Civil Procedure Act (*Zakon o parničnom postupku*) states that litigation costs include expenses incurred in the course of or in relation to the proceedings. These costs include, for example, expenses for the introduction of evidence, court fees, publication expenses, expenses for daily allowances and travelling expenses of judges and court recorders, travelling expenses of the parties in connection with their appearance in court and the like. Litigation costs also include remuneration for the work of lawyers and other persons who have the right to remuneration according to the law.

Pursuant to Article 152 of the Civil Procedure Act each party is to meet, in advance, the costs he or she incurs as a result of his or her actions. When a party proposes evidence, he or she is obliged, by order of the court, to pay, in advance, the amount needed to cover the costs to be incurred in relation to the introduction of evidence. Success in litigation is the basic principle when deciding on who is to finally bear the litigation costs. Thus, the first paragraph of Article 154 of the Civil Procedure Act states that a party who loses a case completely is obliged to pay the costs of the opposing party and his or her intervener incurred by the proceedings. The intervener supporting the losing party is to bear the costs incurred by his or her actions. Pursuant to the second paragraph of Article 154 of the Civil Procedure Act, if a party is partially successful in his or her litigation, the court is to decide on the reimbursement of costs on the basis of the degree of success in the litigation in relation to the claim that was finally filed. Special rules apply in cases where litigation costs are

incurred by the fault of one of the parties or by an event that happened to him or her, when a judgement is given on the basis of a confession, when the plaintiff withdraws the lawsuit or waives the claim, when the litigation is settled by the court and co-litigants participate in litigation (Articles 156-161 of the Civil Procedure Act).

## 2 What exactly is legal aid?

Under the Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*), the purpose of legal aid is to achieve equality before the law, to provide citizens of the Republic of Croatia and other persons with effective legal protection and access to court and other public bodies under equal conditions in accordance with the provisions of the Free Legal Aid Act.

Legal aid is provided as primary or secondary legal aid.

Primary legal aid includes:

- general legal information
- legal advice
- making written submissions to bodies governed by public law, the European Court of Human Rights and international organisations in accordance with international treaties and the rules of operation of these bodies
- representation in proceedings before bodies governed by public law
- legal assistance in amicable out-of-court dispute settlement.

Primary legal aid is provided by state administration offices in counties and the competent administrative body of the City of Zagreb (hereinafter: offices), authorised associations and law clinics. In the provision of primary legal aid offices are authorised to provide general legal information and legal advice and to make submissions.

Secondary legal aid includes:

- legal advice
- making written submissions in proceedings concerning the protection of workers' rights before the employer
- making written submissions in court proceedings
- representation in court proceedings
- legal assistance in amicable settlement of a dispute.

Secondary legal aid is provided by lawyers.

Secondary legal aid also includes:

- exemption from payment of litigation costs
- exemption from payment of court fees.

## 3 Do I have a right to legal aid?

The following persons are entitled to free legal aid:

- Croatian citizens
- children who do not have Croatian citizenship and are found in the Republic of Croatia unaccompanied by an adult responsible under the law
- foreigners with a temporary residence permit under the condition of reciprocity or foreigners with a permanent residence permit
- foreigners under temporary protection
- foreigners residing illegally and foreigners with a short-term residence permit in proceedings for issuing a decision on expulsion or a decision on return
- asylum seekers, foreigners under subsidiary protection and members of their families legally residing in the Republic of Croatia, in proceedings in which legal aid is not provided by a specific law.

As a rule, the following property conditions must be met in order to be granted secondary legal aid:

- a) the total income of the applicant and the members of his/her household per month must not exceed the amount of the budgetary base (HRK 3,326.00) per household member, and
- b) the total value of property owned by the applicant and the members of his/her household must not exceed the amount of 60 budgetary bases (HRK 199,560.00).

Secondary legal aid will be granted without determining the financial situation if the applicant is:

- a) a child in the process of exercising the right to maintenance
- b) a victim of a violent crime in proceedings for the purpose of exercising the right to compensation for damage caused by the criminal offence
- c) a person entitled to a support allowance in accordance with specific regulations governing the exercise of rights under the social welfare system, or
- d) a person entitled to benefits under the Act on the Rights of Croatian Homeland War Veterans and their Family Members (*Zakon o pravima hrvatskih branitelja iz Domovinskog rata i članova njihovih obitelji*) and the Act on the Protection of Military and Civilian Invalids of War (*Zakon o zaštiti vojnih i civilnih invalida rata*).

Legal aid can also be granted for cross-border disputes. A cross-border dispute is a dispute in which the applicant for legal aid has his or her permanent address or usually resides in a Member State of the European Union, which is not the Member State in which the court is acting or in which the judgement is to be enforced.

Legal aid in cross-border disputes is granted in civil and commercial matters and in proceedings of mediation or out-of-court settlement, enforcement of authentic instruments and the provision of legal advice in such proceedings. The provisions on legal aid in cross-border disputes do not apply in tax, customs and other administrative procedures.

An applicant for legal aid in a cross-border dispute will be granted legal aid if he or she meets the preconditions established by the Free Legal Aid Act. Exceptionally, legal aid may be granted to an applicant who does not meet the conditions for granting legal aid laid down by the Free Legal Aid Act if they prove that they are unable to pay the costs of the proceedings due to the difference in the cost of living between the Member State of residence and the Republic of Croatia.

## 4 Is legal aid granted for all types of proceedings?

Primary legal aid can be provided in any legal matter:

- if the applicant does not have sufficient knowledge and capacity to exercise his/her right
- if the applicant has not been provided with legal aid on the basis of specific regulations
- if the submitted application is not manifestly unfounded and
- if the material circumstances of the applicant are such that the payment of professional legal aid could jeopardise the livelihood of the applicant and the members of his/her household.

Secondary legal aid provided by lawyers and exemption from paying litigation costs may be granted in the following types of proceedings:

- in connection with rights in rem, except for land registry procedures

- in connection with employment proceedings
- in connection with family relations, except in proceedings of divorce by mutual consent in which the spouses do not have minor children in common or adopted or children over whom they exercise parental authority after coming of age
- enforcement proceedings and security proceedings for enforcing or securing a claim arising from proceedings for which legal aid may be granted in accordance with the provisions of the Free Legal Aid Act
- amicable settlement of the dispute
- exceptionally, in all other administrative and civil court proceedings when such a need arises from the specific life circumstances of the applicant and the members of his/her household, and in accordance with the fundamental purpose of the Free Legal Aid Act.

Secondary legal aid provided by lawyers may be granted in the above proceedings under the following conditions:

- if the proceedings are of a more complex nature
- if the applicant cannot represent himself/herself
- if the material circumstances of the applicant are such that the payment of professional legal aid could jeopardise the livelihood of the applicant and the members of his/her household, in accordance with the specific conditions laid down in Article 14 of the Free Legal Aid Act
- if it is not a case of vexatious litigation
- if in the last six months from the day of submitting the application an application from the applicant has not been rejected due to intentional provision of incorrect information, and
- if the applicant has not been provided with legal aid on the basis of specific regulations.

Exemption from court fees may be granted in all court proceedings (civil proceedings and administrative disputes) if the applicant's material circumstances are such that the payment of court fees could jeopardise the livelihood of the applicant and of the members of his/her household, subject to the special conditions set out in Article 14 of the Free Legal Aid Act. When a decision is made, special attention will be paid to the amount of court fees in the procedure in which exemption is requested.

#### **5 Are there special procedures in cases of need?**

The office must decide on an application for approval of secondary legal aid within 15 days from the day on which it was submitted. If the applicant loses the right to take the action for which he or she submitted the application due to expiration of the deadline, the office must decide on the application within a shorter period which allows the applicant to take the action in a timely manner.

#### **6 Where can I obtain a legal aid application form?**

The procedure for obtaining primary legal aid is initiated by directly contacting the provider of primary legal aid (authorised association, law clinic or office) and it is not necessary to fill in a specific application form.

The procedure for obtaining secondary legal aid is initiated by submitting a request for granting legal aid on the prescribed form to the competent office. The application form for legal aid can be obtained from the offices and on the websites of the offices and the Ministry of Justice.

Applications for legal aid in a cross-border dispute and applications for the transmission of applications for legal aid in a cross-border dispute are to be submitted on the forms prescribed by Commission Decision 2004/844/EC of 9 November 2004 establishing a form for legal aid applications under Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes and Commission Decision 2005/630/EC of 26 August 2005 establishing a form for the transmission of legal aid applications under Council Directive 2003/8/EC, published in the Official Journal of the European Union.

Forms and all accompanying documents in a cross-border dispute must be submitted translated into Croatian. Otherwise, the request will be dismissed.

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

When an application is submitted to the competent office, it must be accompanied by the written consent of the applicant and the members of his or her household to allow access to all data on total income and assets, in which the applicant confirms that the information provided is accurate and complete. Victims of domestic violence submit their consent to allow access to all data on income and property only for themselves. Consent is not submitted by those members of the household who participate in the proceedings as defendant or whose interest is contrary to the interest of the applicant.

The application form for legal aid in a cross-border dispute should be accompanied by the relevant documentation required to make a decision on the application.

#### **8 Where do I submit my application for legal aid?**

The procedure for obtaining primary legal aid is initiated by directly contacting a provider of primary legal aid (authorised association, law clinic or office), and there is no need to submit a specific application, while the procedure for obtaining secondary legal aid is initiated by submitting an application to the competent office in whose territory the applicant has his/her permanent address or where he/she usually resides.

An applicant who has his/her permanent address or usually resides in a Member State of the European Union and seeks legal aid in a cross-border dispute before a court in the Republic of Croatia must submit a legal aid application to the Ministry of Justice of the Republic of Croatia (receiving authority).

A party who has his/her permanent address or usually resides in the Republic of Croatia and who seeks legal aid in a cross-border dispute before a court of another Member State of the European Union, must submit his/her application to the office responsible for his/her place of permanent residence or usual residence.

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

Secondary legal aid is granted to an applicant who meets the conditions for exercising the right to legal aid by issuing a decision on granting legal aid. An office must decide on an application within 15 days from the date on which it was submitted.

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

The decision on legal aid includes the right to use some or all forms of secondary legal aid for a procedure of a certain type and degree. The above mentioned decision contains the personal data of the beneficiary of legal aid, a brief description of the legal matter for which the legal aid was granted, the form and scope of the approved legal aid, data on the lawyer who will provide legal aid and other data relevant to the decision.

When the applicant submits an application for legal aid in the form of an exemption from court fees, he/she must inform the court in the submission, or when taking another action in the court proceedings, about the submitted application for exemption from court fees, and must submit the decision exempting him/her from paying court fees no later than six months from the day of filing the submission or from the date of taking another action in the proceedings before the court.

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

The decision granting secondary legal aid also determines the lawyer who will provide the beneficiary with legal aid. The beneficiary of legal aid must submit the decision to the lawyer specified in the decision. Exceptionally, the office will appoint another lawyer for the beneficiary with his/her prior consent attached to the application for legal aid

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

As stated above, the decision granting legal aid includes the right to use some or all forms of secondary legal aid for a procedure of a certain type and degree. Under the decision granting legal aid, the beneficiary may be fully or partially exempted from paying attorney's fees, litigation costs (exemption from advance payment of costs of witnesses, interpreters, experts, investigations and court publications) and court fees.

Legal aid is granted in full if the applicant is a beneficiary of a support allowance in accordance with specific regulations governing the exercise of rights under the social welfare system, i.e. the right to benefits under the Act on the Rights of Croatian Homeland War Veterans and their Family Members and the Act on Protection of Military and Civilian Invalids of War or if the total income of the applicant and the members of his/her household does not exceed 50% of the monthly amount of the budgetary base per household member.

Any increase in the total income of the applicant and the members of his/her household above 50% of the budgetary base per household member results in a reduction in the amount of legal aid, in such a way that each increase of 10% results in a reduction in legal aid by 10% but the amount of the legal aid should not be less than 50% of the costs determined for legal aid.

If legal aid has not been granted in full, the applicant may lodge an appeal to the Ministry of Justice against the part of the decision refusing to grant legal aid. Such an appeal does not delay the use of the approved amount of legal aid. Administrative proceedings may be initiated against the decision of the Ministry of Justice rejecting the appeal.

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

When a reduced amount of legal aid has been granted, the rest of the costs will be borne by the beneficiary of legal aid. In any event, if the beneficiary of legal aid wins the case, the court will decide that that party should be reimbursed for the costs of the proceedings by the other party.

#### **14 Does legal aid also cover appeals?**

An application for legal aid may request the granting of legal aid for both stages of civil proceedings. In order to prepare extraordinary legal remedies, it is necessary to submit a special application and a specific decision is issued for that legal action only.

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

If during the proceedings the financial situation of the beneficiary of legal aid and the members of his/her household improves to the extent that if this improved financial situation had existed at the time of application it would have affected the applicant's right to legal aid and the scope of legal aid, the competent office will revoke the legal aid decision fully or partially. Beneficiaries of legal aid must inform the office about any improvement in their financial situation within eight days from the day on which it came to their knowledge. A beneficiary of legal aid may lodge an appeal with the Ministry of Justice against the decision revoking the decision granting legal aid within 15 days from the date of receipt of the decision. Administrative proceedings may be initiated against the decision of the Ministry of Justice.

#### **16 Can I contest a refusal to give legal aid?**

The applicant or beneficiary of legal aid may lodge an appeal against the decision of the office rejecting the application for legal aid or against the part of the decision refusing to grant legal aid in full within 15 days from the date of receipt of the decision. The Ministry of Justice must decide on an appeal within eight days from the date of receipt of a valid appeal. Administrative proceedings may be initiated against the decision of the Ministry of Justice.

#### **Further information:**

Website of the Ministry of Justice: <https://pravosudje.gov.hr/besplatna-pravna-pomoc/6184>

Free Legal Aid Act (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) Nos 143/13 and 98/19)

Civil Procedure Act (NN Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11- consolidated text, 25/13, 89/14, 70/19)

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### **Legal aid - Luxembourg**

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

The following costs of a trial can be paid through legal aid:

Stamp and registration duty

Court registry fees

Bailiffs' fees and costs

Experts' costs and fees

Translators' and interpreters' fees

Notaries' costs and fees

Allowances to witnesses

Travel expenses

Publication costs

Lawyers' fees and emoluments

Duties and fees relating to registration, mortgage and pledge

Fees for certificates stating the position in foreign law (*certificats de coutume*).

#### **2 What exactly is legal aid?**

Through legal aid, a natural person who has insufficient means can obtain legal assistance or legal advice from a lawyer for a specific case.

#### **3 Do I have a right to legal aid?**

Persons with insufficient means are eligible for legal aid to defend their interests, providing they are:

Luxembourg nationals, or

foreign nationals authorised to take up residence in Luxembourg, or

nationals of a Member State of the European Union, or

foreign nationals deemed equivalent to Luxembourg nationals for legal aid purposes by virtue of an international treaty, or

illegally staying third-country nationals with a view to the reimbursement of remuneration due under Article 572-7 of the Labour Code (*Code du Travail*).

Legal aid may also be granted to any other foreign national with insufficient means in proceedings relating to their right to asylum, entry, residence, settlement or removal.

Verification of insufficient means is based on the total gross income and capital of the applicant and of any other members of the household.

Legal aid is refused to persons bringing an action which appears a priori to be unreasonable, unlikely to succeed or whose aim seems disproportionate in relation to the potential costs.

#### **4 Is legal aid granted for all types of proceedings?**

Legal aid may be granted to either the plaintiff or the defendant in contentious or noncontentious matters, whether handled in or out of court. It can be requested for any action brought before the ordinary courts or the administrative courts. Legal aid may also be granted in the case of precautionary measures and procedures to enforce court decisions or any other enforceable instrument.

However, it cannot be granted to owners of motor vehicles for disputes resulting from the use of such vehicles. Likewise, it cannot be granted to shopkeepers, industrialists, or craftsmen or professionals in relation to disputes concerning their business or professional activity, except in exceptional and duly substantiated cases; nor, in general, can it be granted for disputes regarding speculative activity by the person applying for legal aid..

#### **5 Are there special procedures in cases of need?**

In cases of emergency, temporary allowance of legal aid may be assigned, without further formality, by the Chairman of the Bar Association (*Bâtonnier de l'Ordre des Avocats*) for the steps the Chairman determines.

#### **6 Where can I obtain a legal aid application form?**

The national application form for legal aid in Luxembourg can be obtained from the Central Social Assistance Service (*Service Central d'Assistance Sociale*, tel. 00 352 475821-1).

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

When applying for legal aid you must attach:

a copy of your identity document;

your  [certificate of registration with the Joint Social Security Centre](#) (*Centre Commun de la Sécurité Sociale - CCSS*) as well as for persons belonging to your household;

for you and each member of your household: pay slips (or a CCSS income certificate), minimum guaranteed income receipts from the *Revenu d'inclusion sociale* (REVIS) scheme, unemployment benefit or pension receipts or other receipts covering the last three months and indicating gross amounts (bank statements are not sufficient);

a zero-balance certificate from the National Solidarity Fund (*Fonds national de solidarité*) for each member of the household, if the household does not receive anything from the Fund;

if the household receives or pays a maintenance allowance, a document indicating the amount paid or received (bank statements for the last three months, for example);

a real estate ownership or non-ownership certificate issued by the Luxembourg Tax Administration (*Administration des contributions directes*) for each member of the household;

where applicable, supporting documents for the ownership of real estate located abroad;

documentary evidence of movable assets (cash, savings, shares, bonds, etc.);

if the household is a tenant, a copy of the lease contract and rent receipts for the last three months;

if the household is repaying a mortgage, proof of payment of the monthly amount;

documentary evidence of income from real estate and movable property;

documents relating to the case in question.

#### **8 Where do I submit my application for legal aid?**

The Chairman of the Bar Association in the applicant's place of residence, or his delegate, decides whether to assign legal aid. For non-residents the decision is taken by the Chairman of the Luxembourg Bar or his delegate.

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

The Chairman's decision will be sent to you by post.

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

In his decision, the Chairman will give the name of the lawyer who will provide legal assistance and will ask you to contact that lawyer.

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

The Chairman appoints the lawyer that the applicant has freely chosen or, if no lawyer has been chosen by the applicant or the Chairman considers their choice inappropriate, the lawyer of the Chairman's own choice. Except on grounds of impediment or conflict of interest, lawyers must accept instructions entrusted to them in this way.

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

As a rule, legal assistance covers all costs relating to the proceedings, procedures or measures for which it was granted (see point 1).

However, legal aid does not cover flatrate legal costs awarded to a successful party (*indemnités de procédure*) or compensation for abuse of process and vexatious proceedings.

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

Partial legal aid does not exist in Luxembourg.

#### **14 Does legal aid also cover appeals?**

No, you will have to submit a new application for legal assistance for that purpose.

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

The Chairman of the Bar Association may withdraw an applicant's right to legal aid, even after the proceedings or measures for which it was granted, if the entitlement is found to have been based on false declarations or incorrect documents. The right to legal aid may also be withdrawn if the beneficiary acquires financial means during the proceedings or during the completion of these measures or as a result of such proceeding or measures which, had they existed on the day that legal aid was requested, would have precluded any such entitlement. Legal aid beneficiaries or the lawyer appointed have an obligation to notify the Chairman of any such changes in their situation.

The Chairman's decision to withdraw the right to legal aid is immediately communicated to the Ministry of Justice (*Ministère de la Justice*). The Land Registration and Estates Department (*Administration de l'Enregistrement et des Domaines*) is responsible for recovering amounts already paid as legal aid.

#### **16 Can I contest a refusal to give legal aid?**

Applicants may appeal against the Chairman's decision to reject or withdraw legal aid to the Disciplinary and Administrative Council (*le Conseil disciplinaire et administratif*), whose decision is final. Appeals must be lodged with the Chairman of the Disciplinary and Administrative Council by registered letter within ten days of receiving notice of decision of the Chairman of the Bar Association. The applicant will be given a hearing before the Council or one of its delegated members.

Useful links:

[Luxembourg Bar](#)

[Guichet.lu](#)

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## Legal aid - Malta

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

The fees for judicial proceedings are set by law. Some payments have to be made at the beginning of court proceedings and others when court proceedings end. These are, in general, fixed fees which include court services. Court services cover registration fees, costs of summonses for the examination of witnesses, other costs related to case proceedings, and costs for copies of judgments. Barring some exceptions, fees due to lawyers in lawsuits are fixed by law. However, parties may agree otherwise in writing.

The fees mentioned above do not include additional court fees, which may, however, be established by the court in the event of a challenge.

As to who is to pay the costs, when the judgment is delivered, it is the court that determines the party who will pay them. As a general rule, the party losing the lawsuit would also be ordered to pay the costs, but the Court may decide otherwise depending on the case.

### 2 What exactly is legal aid?

Legal aid is a form of aid given at the expense of the state to a person at whose request – after an assessment is made of the financial situation by the officials of the Legal Aid Agency, and of the merits of the person's request by the Legal Aid Advocate depending on the type of case – a declaration is made as to whether the person has good cause to sue or defend him/herself, or to continue to be a party to proceedings in order to have access to the courts of justice.

Therefore, legal aid is the provision of legal assistance to people on a low income who cannot afford to pay for their representation and for access to the judicial system. Legal aid is important in order to provide access to justice to ensure equality before the law, the right to a lawyer and the right to a fair hearing for people lacking financial means. Equality is fundamental in a democratic society.

Legal aid is provided in all criminal cases and in almost all civil cases. In civil cases, a person must be eligible under both a means test and a test of the merits of the case.

### 3 Do I have a right to legal aid?

**In civil cases:** Legal aid is only granted to persons once the criteria of both the means test and the merits test are met.

**Means test:** For an applicant to qualify under the means criterion, the person concerned must not have held any kind of property, including available money, the net value of which exceeds €6,988.12 (or as established by law) during the last twelve months. In addition, the applicant's income in the last 12 months preceding the application for legal aid must not exceed the national minimum wage of persons over 18 years of age.

The means test does not take into account items needed every day at home by the applicant and family members or the applicant's principal residence or property (both movable and immovable) when this is the subject of the court proceedings.

**Merits test:** For an applicant to qualify under the merits criterion, the Legal Aid Advocate, after examining the nature of the case, must conclude whether the applicant has a valid right to sue or defend him/herself, or to continue or be a party to proceedings before the courts, namely, that the applicant has a *probabilis causa litigandi*. Each case is examined on its merits. The assessment of the merits is performed by the Legal Aid Advocate. It includes an examination of the case, the possibility of the outcome of the proceedings, and the prospect of success.

A person who is eligible and to whom the Court has assigned a lawyer and legal procurator for legal aid in civil cases will continue to be assisted until the proceedings are definitively concluded.

**In criminal cases:** Legal aid is not subject to the means test. In summary cases in the Qorti tal-Magistrati b'hala Qorti ta' Ġudikatura Kriminali (the Court of Magistrates as a Court of Criminal Judiciary) the Court appoints a lawyer from the day's roster. In other criminal cases, the accused must inform the Court that he/she wishes to be assisted with legal aid and this request must be registered in the records of the proceedings. The Court transmits the request together with the details of the accused to the Legal Aid Advocate who must file a reply as to whether the request has been accepted and the name of the lawyer.

**Criminal appeals:** If you wish to appeal with the assistance of a legal aid lawyer against a judgment delivered in the Court of Magistrates, you must immediately inform the Legal Aid Agency on the same day or the day after the judgment is delivered so that the necessary arrangements can be made for a referral to the Head Legal Aid Advocate. It would be helpful to bring with you a copy of the judgment given.

**Persons under interrogation and/or arrest:** If you have been called in for questioning by the police or have been arrested you have the right to speak to a legal aid lawyer from the day's roster. You should ask the police who interrogate or arrest you for the assistance of a legal aid lawyer.

**Victims of gender-based crime or domestic violence:** If you are a victim of crime as stipulated in the law you may ask to be assisted by a legal aid lawyer.

#### *The procedure*

In civil proceedings, in order to make an appointment with the Head Legal Aid Advocate, a person must first produce the documents mentioned below (or those documents applicable to the person, as the case may be) for the means test to be conducted and to establish whether the person is eligible for legal aid:

A document from the Department of Social Security showing the amount of money the person has received during the last twelve months;

A work FS3/Payslips of the last twelve months' wages;

An account (*statement*) covering the last twelve months of every bank account held by the person in his/her name;

A document from the Employment Agency showing the person's *job history*;

The identity card or passport.

Documents received by the person from the Court in case he/she wishes to be assisted with legal aid;

Other related documents, for example:

For personal separation: a marriage certificate and children's birth certificates;

For marriage annulment or divorce: a copy of the separation contract;

For changes to details in the Public Registry certificates: the person's birth/death/marriage certificate;

Inheritance issues: copy of will, etc.

In the meeting with an Agency official, it will be established whether the client is eligible, under the means test, for the legal aid service. If a person is eligible, an appointment is fixed with the Head Legal Aid Advocate to discuss his or her problem and/or the case in question. Based on the merits test performed, the Head Advocate informs the person concerned whether he/she has good reason to initiate proceedings or to make his/her defence, as the case may be.

A person will be eligible for legal aid after passing both the means test and the merits test. Once eligible, a person will be assisted to complete the legal aid application form required by law and take an oath on his or her financial means and the merits of the case.

A person who is ineligible, under one or both of the tests, will be sent a letter informing them of the rejection of their request and of the reasons for that rejection.

#### **4 Is legal aid granted for all types of proceedings?**

Legal aid is provided to individuals in all criminal cases and in almost all civil cases. In civil cases, a person must be eligible under both the means test and the merits test.

However, in cases concerning a correction or a cancellation of a registration, or concerning the registration of any birth, marriage or death certificate, the means assessment criteria do not apply.

Companies registered under the Companies Act are not entitled to the benefit of legal aid pursuant to Article 926 of Chapter 12 of the Laws of Malta.

#### **5 Are there special procedures in cases of need?**

In urgent situations (such as the issuance of a warrant) the law permits the Legal Aid Advocate to obtain provisional authorisation from the competent Court to file specific judicial acts on behalf of the person requesting legal aid, following which the means test and merits test must be performed.

If the competent Court subsequently removes the benefit of legal aid, judicial acts filed by the Legal Aid Advocate will not be rendered null, but any future benefit will be removed and the Court may order that the costs incurred during the provisional authorisation be paid by the applicant.

#### **6 Where can I obtain a legal aid application form?**

The application form can be filled in at the Malta Legal Aid office with the assistance of an official at the Legal Aid Agency. The content of the application must be sworn by the applicant. The request for legal aid can also be submitted by application to the Civil Court.

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

The application to initiate legal aid proceedings shall include the documents that requested in the section entitled 'the procedure' in reply number 3 above.

The documents annexed to the application shall reflect the subject matter at issue about which the person is requesting the institution of proceedings. For example, if there is a request for a marriage annulment, a copy of the marriage certificate should be attached. Documents needed by the Legal Aid Advocate in order to be able to determine the reasons for granting, or not granting, the request for legal aid must be submitted to the Legal Aid Advocate upon request.

#### **8 Where do I submit my application for legal aid?**

You should refer it to the Malta Legal Aid offices: <https://justice.gov.mt/mt/legalaidmalta/Pages/contact.aspx>

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

The applicant for the legal aid service will be formally informed by an SMS notification, telephone, letter or e-mail whether the application for the benefit of legal aid has been approved in accordance with the needs of each applicant. The applicant will be informed of the name of the lawyer and the legal procurator and of their mobile number.

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

If the applicant qualifies for legal aid, he/she will be informed of the name of the lawyer and legal procurator assigned to assist in the proceedings. It is the duty of the applicant to communicate with the lawyer assigned to him/her in order to fix an appointment to discuss the case and follow the initiated proceedings.

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

Once the application has been approved, the applicant is assigned a lawyer and a legal procurator whose name appears on the list available to the Court and whose name is next in the roster. If the applicant, for any valid reason, wishes to replace the lawyer with another lawyer who comes up next in the roster, it will be necessary to file an application in Court. It is only by means of a court decree that a legal aid lawyer can be replaced.

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

Legal aid to the applicant covers court costs. Accordingly, the applicant is exempted from paying fees or providing a guarantee for costs.

If the applicant wins his/her action in the lawsuit, he/she will have to pay the expenses of the lawyer, the legal procurator, the curators, the arbitrators and the experts (if any) from the amount he receives or from the proceeds of the sale by auction of immovable or movable property under the judgment without prejudice to his/her right to be reimbursed by any third party who may have been ordered to pay such costs.

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

In Malta, the concept of partial legal aid service does not apply. This means that either the applicant has full legal aid service or the request for legal aid is rejected. If the party receiving legal aid is ordered to pay the costs of the proceedings, the Registrar of Civil Courts and Tribunals will not be able to claim reimbursement of the registry fees from the winning party.

#### **14 Does legal aid also cover appeals?**

If the applicant qualifies for legal aid, he/she will be entitled to legal aid assistance at all levels, including legal assistance in the courts of appeal.

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

If it is proved to the Court that during the time the applicant benefited from legal aid, he/she was aware that he/she was in possession of more capital or income than that established by law in order to benefit from legal aid, or that during the hearing of the case the applicant was aware that his/her income had increased to more than that established by law, and he/she did not report this, the Court may find the applicant in contempt of court. Proceedings for perjury may also be initiated against the applicant.

In both cases, the applicant will be liable for all the costs of the case in the same way as if he/she did not benefit from legal aid.

#### **16 Can I contest a refusal to give legal aid?**

There is no appeal against the decision rejecting a request for legal aid. However, if the report made by the Legal Aid Advocate is not in favour of the applicant, the Civil Court shall examine the report, giving the parties an opportunity to make submissions before deciding whether to accept the negative report or whether to reject the report and admit the party to the claim.

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## Legal aid - Austria

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

During civil proceedings court fees arise and parties may also incur fees for experts, interpreters and witnesses, travel expenses for parties and any court-appointed trustees (*Kuratoren*) (for parties who are absent or require a trustee), as well as costs associated with public announcements and representation by a lawyer. Each party initially bears his or her own costs; however, the unsuccessful party in civil proceedings is obliged to reimburse the costs of the successful party.

### 2 What exactly is legal aid?

A party with insufficient financial means can apply for legal aid (known as *Verfahrenshilfe* in Austrian civil proceedings) when instituting civil proceedings or at any time while those proceedings are in progress. Depending on the application, the legal aid may take the form of full or partial exemption from court fees and the other fees and expenses referred to under point 1, as well as the appointment of a lawyer free of charge.

If a lawyer is appointed, the legal aid also covers the advice given by the lawyer prior to the proceedings.

### 3 Do I have a right to legal aid?

Legal aid is only granted if the party concerned, on the basis of his or her income, assets and maintenance obligations, is unable to cover the costs listed under point 1 (or a portion thereof) without encroaching on the level of resources necessary to maintain a modest standard of living.

Legal aid is not granted if the intended legal action or defence appears to be manifestly frivolous or devoid of any prospect of success.

### 4 Is legal aid granted for all types of proceedings?

Legal aid is granted in all court proceedings in civil and commercial matters, and the applicant is not subject to any nationality or residence requirement.

Where legal aid is granted in the original proceedings (*Titelverfahren*), it also covers the enforcement proceedings (*Vollstreckungsverfahren*). A party who has been granted legal aid in another EU Member State for a particular dispute is also entitled to legal aid in Austria for the proceedings associated with the recognition and enforcement of the judgment given in the dispute.

### 5 Are there special procedures in cases of need?

No, but if an application is made for legal aid in a case of need (e.g. in relation to legal representation in the event of interim measures), the court is required to reach a decision particularly quickly. If the trial court grants legal aid through appointment of a lawyer, the competent bar association appoints the lawyer as the applicant's representative within a few days.

### 6 Where can I obtain a legal aid application form?

In Austria the relevant form ('ZPForm 1') can be collected in person from any court of first instance (district court (*Bezirksgericht*), regional court (*Landesgericht*)) or applied for in writing from such a court. However, it is also available online at <https://portal.justiz.gv.at/at.gv.justiz.formulare/Justiz/Verfahrenshilfe.aspx> and from certain Austrian consulates. Use of the form is compulsory.

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

The declaration of assets included in the legal aid application ('ZPForm 1'), which comprises a list of assets (income and assets such as property, bank balances, insurance policies, etc.) and liabilities (maintenance obligations etc.), as well as information about the individual and his or her living arrangements, must be completed accurately. Relevant documents should also be enclosed, if possible. Providing incorrect or incomplete information in the declaration of assets is punishable by fine and may give rise to civil liability for any damage caused and result in criminal prosecution on account of fraud.

### 8 Where do I submit my application for legal aid?

The legal aid application ('ZPForm 1') must be submitted in writing or verbally to the trial court of first instance that will decide whether legal aid will be granted or rejected. However, the party may also submit his or her legal aid application verbally to the district court in his or her place of residence in Austria, even if that district court is not competent to rule on the dispute, provided that the trial court's seat is outside the judicial district in which the party resides. In that case the application will be forwarded to the competent court.

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

The court will decide on the legal aid application. That decision will be sent to the applicant.

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

If the court has decided that the legal aid will include the appointment of a lawyer and the identity of the lawyer has already been established (see question 11), it makes most sense to contact that person.

Generally speaking, it is recommended that legal advice be obtained from a legal professional authorised for representation (lawyer or notary) before court proceedings are instituted.

However, if a party is not represented by a lawyer (and representation by a lawyer is not required by law), it is also possible for a party to institute the action, and submit all other requests, applications and notifications required outside the hearing, verbally at the district court that is competent to hear the proceedings in question or the district court in his or her place of residence.

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

If the court has decided that the legal aid will include the appointment of a lawyer, the local bar association will select a lawyer from amongst its members in alphabetical order. The applicant may, however, propose a specific lawyer. Although that proposal is not binding on the local bar association, a justified proposal will generally be accepted (if the lawyer agrees and is already familiar with the case, for example).

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

At its discretion, the court may grant full legal aid or, depending on the applicant's financial situation and taking the expected costs into account, may exempt him or her from certain fees only. The legal aid can cover the following:

1. a provisional exemption from the payment of court fees, fees of witnesses and experts, costs of necessary public announcements, costs of a trustee and the cash expenses of the trustee or lawyer; exemption from the deposit to cover the opposing party's costs;
2. representation by a court clerk or, if necessary, by a lawyer;
3. reimbursement of necessary travel expenses incurred by the party in order to be heard or explain the facts before the court leading the proceedings.

However, if the court rules against you, you will have to reimburse the costs of the proceedings incurred by the successful party.

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

If you incur other necessary costs that are not covered by the legal aid granted in accordance with the court's decision, you will have to settle those yourself, at least provisionally. However, the unsuccessful party in a civil case ultimately has to reimburse the opposing party's costs on a pro rata basis, according to the portion of the action in respect of which he or she has been unsuccessful (if, for example, the claimant is successful in respect of two thirds of his or her

action and the defendant is successful in relation to one third, the defendant will generally bear his or her own costs and reimburse one third of the necessary costs incurred by the claimant).

#### 14 Does legal aid also cover appeals?

The legal aid covers all stages of the proceedings through to the conclusion of the dispute (and any enforcement proceedings that may be subsequently instituted). It therefore also covers possible appeals (or appeal proceedings).

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

The court must declare the legal aid to have lapsed if it emerges that the conditions on the basis of which the legal aid was originally granted are no longer met (if the party's financial circumstances change or any further legal action or defence appears to be manifestly frivolous or devoid of any prospect of success) or must withdraw the legal aid if it can be proven that the requirements for granting the legal aid had not been met at the time when it was awarded. In the latter case the party must refund the amounts received and pay the lawyer assigned to him or her on the basis of his or her rate.

A party who acquires sufficient financial resources within 3 years of the end of the proceedings is obliged to pay back the legal aid, provided he or she is able to do so without encroaching on the level of resources necessary to maintain a modest standard of living. To assess the party's financial situation, he or she will be asked by the court to present an up-to-date declaration of assets (generally by submitting the 'ZPForm 1' document a certain time after the end of the proceedings). If the declaration of assets is not submitted to the court on time with the necessary documents, the legal aid may be revoked and the amounts in question will have to be refunded.

#### 16 Can I contest a refusal to give legal aid?

An appeal against a decision refusing legal aid can be lodged with the court of second instance, which will make a final decision. It is not possible to lodge a further appeal with the Supreme Court of Justice (*Oberster Gerichtshof*).

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### Legal aid - Portugal

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

Under the terms of Article 529 of the Portuguese Code of Civil Procedure (*Código de Processo Civil*), the costs and expenses involved in court proceedings consist of:

- i. court fees (*taxa de justiça*);
- ii. case-related expenses (*encargos*);
- iii. costs of the parties (*custas de parte*).

Accordingly:

- i. Court fees must be paid by each of the parties involved for the respective legal proceedings to be launched. Court costs are calculated in accordance with the value or complexity of the claim, under the terms of the Portuguese Regulations on Court Costs (*Regulamento das Custas Processuais*) and of the tables appended to those Regulations. Court fees are expressed in 'units of account' (*unidades de conta - UC*), as laid down in Article 5 of the Regulations on Court Costs. At the end of 2019, the value of 1 (one) unit of account was set at €102.00. This amount may change over time.
- ii. Case-related expenses are those incurred as a result of the court proceedings (such as payments to experts, interpreting services, etc.) when requested by the parties or ordered by the judge – see Article 16 of the Regulations on Court Costs.
- iii. Costs of the parties are the amounts spent by each of the parties in dealing with the court case, a sum which they are repaid if the opposing party loses the case, under the terms of Article 26 of the Regulations on Court Costs (e.g. expenses with fees paid to an attorney; expenses with court-appointed enforcement agents etc.).

Useful links:

[Regulations on Court Costs \(in Portuguese\)](#)

[Code of Civil Procedure \(in Portuguese\)](#)

#### 2 What exactly is legal aid?

Access to the law and to the Courts is provided for under Law 34/2004 of 29 July.

Under the terms of Article 6 of Law 34/2004, legal protection is available in two forms:

- i. legal advice
- ii. legal aid.

Accordingly:

- i. Under the terms of Articles 14 and 15 of Law 34/2004, legal advice consists of technical clarification on the law applicable to specific issues or cases and may be provided by lawyers.
- ii. By virtue of Article 16 of Law 34/2004, legal aid exists in the following forms:
  - exemption from court fees and other case-related expenses;
  - the appointment of legal counsel (such as lawyers and solicitors) and payment of their fees and other expenses (such as travel costs);
  - payment of the fees of court-appointed legal counsel (such as a lawyer in criminal proceedings);
  - payment of court fees and other case-related expenses in instalments;
  - appointment of legal counsel and payment of the relevant fees and expenses in instalments;
  - payment of the fees and expenses due to court-appointed legal counsel in instalments;
  - the attribution of a court-appointed enforcement agent and payment of the corresponding fees (such as for the serving of a summons, for the measures needed to carry out the seizure of assets, and other enforcement procedures).

Useful link:

[Law 34/2004 of 29 July on access to the law and to the Courts \(in Portuguese\)](#)

#### 3 Do I have a right to legal aid?

By virtue of Article 7 of Law 34/2004, the following categories of people are entitled to legal protection, if they can prove financial hardship:

Portuguese citizens;

citizens of the European Union;

foreigners and stateless persons who are holders of a valid residency permit in a Member State of the European Union;

foreigners without valid residency permits in a Member State of the European Union when residency would be attributed to Portuguese citizens in the same situation under the laws of those States;

non-profit-making organisations are only entitled to legal protection in the form of legal aid.

NB: profit-making entities and individual limited companies are not entitled to legal protection.

#### **4 Is legal aid granted for all types of proceedings?**

Under Article 17 of Law 34/2004 and Article 7 of Ministerial Implementing Order 46/2015, the legal aid scheme is applicable:

to all courts, regardless of the type of case;

to Justices of the Peace;

to systems of alternative dispute resolution such as State-run mediation (*mediação pública*) e.g. family or labour mediation;

to cases run by registry offices;

to inventories being dealt with at notarial offices;

to cases of infringement.

Useful links:

[🔗 State-run Family Mediation System \(in Portuguese\)](#)

[🔗 State-run Labour Mediation System \(in Portuguese\)](#)

[🔗 Ministerial Implementing Order 46/2015 of 23 February \(in Portuguese\)](#)

#### **5 Are there special procedures in cases of need?**

In urgent cases, when no final decision on requested legal aid has been made at the time when payment of court fees and other expenses relating to the court case is due, the applicant must present the document proving that they have applied for legal aid and then proceed in the following manner (see Article 29(5) of Law 34/2004).

When the decision of the competent social security department is not yet known, the deadline for the relevant payment is suspended until the decision has been communicated to the applicant.

When a decision has already been made by the social security department to award legal aid in the form of payment in instalments, payment of the first instalment is due 10 days from the date that the decision is communicated to the applicant, without prejudice to the later repayment of money paid in cases where the decision is revoked.

When a negative decision has already been issued by the social security department, payment is due 10 days from the date that the decision is communicated to the applicant, without prejudice to the later repayment of money paid in cases where the decision is revoked.

If a period of 30 days elapses with no decision on the request for legal protection (legal advice or legal aid) having been issued, the request is understood to have been tacitly granted, and the interested party may invoke this tacit consent before the Court or the Portuguese Bar Association, depending on the form of legal protection requested – see Article 25 of Law 34/2004.

#### **6 Where can I obtain a legal aid application form?**

The forms needed to apply for legal protection in the form of legal advice or any other form of legal aid, including the form for applying for legal aid in another Member State, may be downloaded from the Portuguese Social Security website [🔗 here \(in Portuguese\)](#).

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

The list of documents that need to be attached to the application can be found in 'Legal Protection – A Practical Guide' (*Guia Prático Protecção Jurídica*), issued by the Portuguese Institute for Social Security (*Instituto da Segurança Social, I.P.*), and published on the 'Practical Guides' (*Guias Práticos*) page of their website, accessible via any of the following links:

[🔗 Portuguese Social Security website](#)

[🔗 Legal Protection – A Practical Guide \(in Portuguese\)](#)

#### **8 Where do I submit my application for legal aid?**

The application and its attached documents may be submitted in person or sent by post, fax, or e-mail to any department of the Institute of Social Security that deals directly with the public.

The list of central social security offices for each district and their respective addresses, fax numbers and e-mail addresses may be consulted [🔗 here \(in Portuguese\)](#).

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

The decision to award legal aid must specify the which forms of legal aid have been approved, this decision being the responsibility of the senior manager of the department of social security for the area in which the applicant is resident or based. When the applicant is not resident in Portugal, this decision is made by the senior manager of the social security department to which the application was submitted – see Articles 20 and 29 of Law 34/2004.

Under the terms of Article 26 of Law 34/2004, applicants must be notified of decisions approving an application for legal aid. As a rule, such notification is sent to the address given by the applicant gave on the form as their correspondence address.

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

When legal counsel is nominated on their behalf, the applicant is notified of the address of the office of the legal counsel in question, and also informed that it is the duty of the applicant to cooperate fully with them, with the risk of legal aid being removed if this collaboration does not happen.

In order for the legal aid in the form of total or partial exemption from court fees and case-related expenses incurred by the court to take effect, the applicant must present the document showing that such aid has been granted within the period given for the payment of court fees.

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

Legal counsel is appointed by the Portuguese Bar Association, who will then notify the applicant under the terms of Articles 30 and 31 of Law 34/2004.

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

Legal aid covers the expenses outlined in Article 16 of Law 34/2004, which are:

court fees and other case-related expenses;

payment of the fees for legal counsel;

payment of the fees for court-appointed legal counsel;

payment of court fees and other case-related expenses in instalments;

payment of the fees for legal counsel in instalments;

payment of the fees for court-appointed legal counsel in instalments;

cost of the court-appointed enforcement agent;

payment of expenses arising from the fact that the case is cross-border in nature, in cases where the applicant resides in another Member State.

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

Under Article 29(4) and (5) of Law 34/2004, any remaining costs are to be paid by the applicant. This is without prejudice to the applicant being compensated for costs of the parties, under the terms of Article 26 of the Regulations of Court Costs, if the applicant wins their case.

### 14 Does legal aid also cover appeals?

Yes, legal aid remains in place for appeals and covers all subsequent proceedings linked to the case for which legal aid was granted. Legal aid also applies to the main court case, when it is awarded to any of the linked proceedings. Legal aid also remains in place for any enforcement procedures arising from judicial decisions made in proceedings in which legal aid has been awarded – see Article 18 of Law 34/2004.

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

Yes, legal aid may be cancelled either in full or in part, before the end of the proceedings, in those cases provided for in Article 10 of Law 34/2004. This applies to cases where the applicant or members of their family subsequently obtain sufficient financial means. In this case, it is the duty of the applicant to declare that they can do without legal protection, either in full or in part, or risk being subject to the relevant penalties.

### 16 Can I contest a refusal to give legal aid?

If the social security department decides to reject the application, either in full or in part, they must notify the applicant in writing of their intention, giving the applicant 10 days to reply. The applicant may, with their reply, submit documents that were missing, or which serve to confirm their arguments. If the applicant does not reply within a period of 10 working days, the decision then becomes definitive, with no further letter being sent to the applicant – see Article 37 of Law 34/2004 which refers to the Portuguese Code of Administrative Procedure (*Código do Procedimento Administrativo*).

The applicant may challenge the decision made by the social security department before the court. In this case, the applicant must submit a written request challenging the decision within a period of 15 days to the social security department which made that decision. The social security department may revoke the decision. If the decision is not revoked, the social security department must refer the case to the Court – see Articles 26 to 28 of Law 34/2004.

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## Legal aid - Romania

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

Public legal aid may be provided in the following forms:

- payment of the fee for representation, legal assistance and, where applicable, defence by an appointed or selected lawyer in order to ensure the exercise or safeguarding of a right or legitimate interest in court or to prevent a dispute, hereinafter assistance by a lawyer;
- payment provided to the expert, translator or interpreter resorted to throughout the proceedings, with the approval of the court or judicial authority, if such payment is lawfully incumbent upon the person applying for public legal aid;
- payment of the bailiff's fee;
- exemptions from, reductions in, rescheduling or deferral of payment of legal costs, as provided for by the law, including those due at the enforcement stage.

Where public legal aid is provided to citizens of EU Member States or to other persons who are domiciled or habitually reside within the territory of a Member State, the approved public legal aid may also include:

- expenses for translation of the documents submitted by the recipient, which were requested by the court or by the judicial authority for the resolution of the case, and related requests and documents submitted or received are exempted from the legalisation formality or from any other equivalent formality.
- an interpreter's services in the proceedings conducted before the court/judicial authority;
- expenses incurred with travel that the recipient of the assistance or another person must undertake to Romania at the request of the court or judicial authority, or where the law requires the mandatory presence of either of these persons.

The eligible person who meets the requirements set out in question No 3 is also entitled to reimbursement of the payment made to the mediator as a fee where they provide proof that, before the initiation of legal proceedings, they had undergone the mediation proceedings for the dispute or if they request mediation after the initiation of proceedings, but before the first hearing date.

Public legal aid may be provided, either separately or cumulatively, in any of the above-mentioned forms. The value of the public legal aid provided, either separately or cumulatively, in any of the forms of assistance by a lawyer, expert, translator, interpreter or bailiff, may not exceed the maximum equivalent level of ten national gross minimum salaries over a one-year period in the year when the aid application was lodged.

*(Articles 1 and 20 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented)*

### 2 What exactly is legal aid?

Public legal aid constitutes the form of assistance granted by the State with the purpose of providing for the right to a fair trial and of safeguarding equal access to the act of justice in order to ensure the exercise of certain rights or legitimate interests by judicial means, including for enforcement of court judgments or other enforceable titles.

*(Article 1 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented)*

### 3 Do I have a right to legal aid?

Any natural person may apply for the public legal aid if they are unable to cope with the legal costs for certain proceedings, or with those arising from the reception of legal advice in order to safeguard a right or legitimate interest in court, without jeopardising their or their family's maintenance.

Family means spouses, children or other direct descendants up to the age of 18, who are financially dependent on the applicant, and children or other direct descendants over the age of 18, but up to the age of 26, if they are continuing their studies and are financially dependent on the applicant. A member of the family is also considered to be the person who shares the domicile or place of residence, or household, with the applicant, the children or other direct descendants thereof up to the age of 18, who are financially dependent on the applicant, and children or other direct descendants over the age of 18, but up to the age of 26, if they are continuing their studies and are financially dependent on the applicant.

The persons whose monthly average net income per family member is below RON 300 in the last two months preceding the submission of the application are entitled to public legal aid. In this case, the amounts constituting public legal aid are fully paid by the State. If the average net income per family member in the last two months preceding the submission of the application is below RON 600, the amounts constituting public legal aid are paid by the State in a rate

of 50%. The amounts constituting income thresholds and the maximum threshold that may be granted as public legal aid may be revised under a Government decision.

Public legal aid may also be granted in other cases, proportionally with the applicant's needs, when the actual or estimated legal costs are likely to restrict that applicant's effective access to justice, including for the different living costs between the Member State where the applicant is domiciled or habitually resides and Romania.

Account is taken, when determining the income, of any regular income such as wages, allowances, fees, annuities, rents, profit from trade or from self-employment and others alike, as well as amounts due on a regular basis, such as rents and maintenance obligations.

Public legal aid is granted independently of the applicant's financial status if a special law provides for the right to legal assistance or to free legal assistance as a protective measure in the light of special circumstances such as minority, disability, a certain status or others alike. In this case, public legal aid is granted without the income criteria being met, but only for the safeguarding or recognition of certain rights or legitimate interests arising from or related to the special circumstance that justified recognition, under the law, of the right to legal assistance or to free legal assistance.

The right to public legal aid is extinguished with the death of the party or with the improvement of that party's financial status to such an extent that they can afford the legal costs.

*(Articles 4, 5, 8, 81, 9, 10, 101, 2, 21 and 50 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented)*

#### **4 Is legal aid granted for all types of proceedings?**

The public legal aid provided for by this Government Emergency Order is granted in civil, commercial, administrative, labour and social security matters, as well as in other matters, with the exception of criminal matters.

*(Article 3 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented)*

#### **5 Are there special procedures in cases of need?**

No particular urgency proceedings are regulated in matters of legal assistance.

#### **6 Where can I obtain a legal aid application form?**

Applications for public legal aid, which are submitted in accordance with this chapter, are prepared as per the application form set out in the Annex that forms an integral part of this Emergency Order *(Article 49 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented)*.

FORM

for legal aid application in another Member State of the European Union

Instructions:

1. Before filling in the application form, please read carefully these instructions.
2. The person who completes the application must provide all the information requested in this form.
3. Any imprecise, inadequate or incomplete information may delay the processing of your application.
4. Including false or incomplete information in the application may result in legal consequences and the application for legal aid may be rejected; you may also face criminal charges.
5. Please attach all supporting documents.
6. Please note that this application does not affect the time limit to be observed for commencing judicial proceedings.
7. Please date and sign the application.

A1. Applicant's personal details

Surname and forename .....

Date and place of birth .....

Personal number .....

Address (domicile or residence) .....

.....

Tel./Fax/E-mail .....

A2. Personal details of the legal representative (parent, guardian, curator etc.), where applicable (to be completed if the applicant is legally represented)

Surname and forename .....

Date and place of birth .....

Personal number .....

Address .....

Tel./Fax/E-mail .....

A3. Personal details of the applicant's lawyer, where applicable (to be completed if the applicant already has a lawyer)

Surname and forename .....

Address .....

Tel./Fax/E-mail .....

B. Information concerning the dispute for which legal aid is requested

Please attach copies of all supporting documents.

B1. Nature of the dispute (divorce, employment etc.)

B2. Value of the dispute if it can be expressed in money, and the currency in which the dispute value is expressed

B3. Description of the situation for the settlement of which public legal aid is requested (including the competent court, the hearing date, the evidence etc.)

C. Details on the proceedings

Please attach copies of all supporting documents.

C1. Your current or upcoming position in the proceedings (plaintiff or defendant)

Describe the subject-matter of the claim submitted for examination .....

.....

Name and contact details of the opponent .....

.....

C2. Special reasons for requesting urgent action on this application, where applicable

C3. Please list the expenses that should be covered by the application (to be checked):

- a) lawyer's assistance;
- b) expert's payment;
- c) payment for the translator or interpreter resorted to throughout the proceedings;
- d) payment of the bailiff's fee;
- e) exemptions from, reductions in, rescheduling or deferral of payment of legal costs and/or bails, as provided for by the law, including fees and bails payable at the enforcement stage.

C4. Please specify whether the public legal aid is requested for obtaining:

- A lawyer's assistance within the framework of extrajudicial procedures
- A lawyer's assistance before the initiation of legal proceedings
- A lawyer's assistance (consulting and/or representation) within the framework of on-going legal proceedings. In this case, please specify:
  - registration number
  - dates of hearings
  - name of the court
  - address of the court
- A lawyer's assistance in recourse to judicial review procedures against a court judgment. In this case, please specify:
  - name of the court
  - the judgment date
  - the reason why assistance is requested
  - the appeal against the judgment
- A lawyer's assistance in enforcement proceedings. In this case, please specify:
  - name of the court
  - the ruling date or the date of issue of another enforceable title.

C6. Specify whether you have any form of insurance or other rights and facilities which may cover legal costs in full or in part.

If so, please provide details: .....

.....

.....

D. Family situation

How many people live in your household?

Please specify their relationship to you

Surname and forename	Relationship to the applicant (for minors)	Date of birth	Is this person financially dependent on the applicant?	Is the applicant financially dependent on this person?
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

Is there any person who is financially dependent on you who does not reside with you?

Surname and forename	Relationship to the applicant	Date of birth

Are you financially dependent on a person who does not reside with you?

Surname and forename	Relationship to the applicant


E. Financial information

Please provide all information about you, your cohabitee or your spouse, about any person who is financially dependent on you or, where applicable, any person you are financially dependent on.

If you receive other financial contributions than maintenance from a person on whom you financially depend and who does not reside with you, please indicate them under Section E.1 "Other income".

If you provide financial assistance to a person other than someone who is financially dependent on you and who resides with you, please indicate this under Section E.3 "Other expenses".

Please attach all supporting documents of the situations described here above.

Please specify the currency in which you express the pecuniary values in the table if they are expressed in a currency other than RON.

[E.1. Details about  I. Applicant II. Spouse or III. Dependent IV. Persons					
monthly income		[cohabitee	persons	[supporting]	
		the			
			[applicant]		
Salaries, indemnities:					
Business profit:					
Pensions:					
Income:					
Benefits from the State:					
1. allowances:					
2. unemployment benefit and social insurance:					
Income from entitlements to certain movable or immovable assets:					
Other income:					
TOTAL:					

[E.2. Amount  I. Applicant  II. Spouse or III. Dependent IV. Persons					
of properties		[cohabitee	persons	[supporting]	
		the			
			[applicant]		
The building where you live:					
Another building:					
Land:					
Savings:					
Shares:					
Motor vehicles:					
Other assets:					

TOTAL:									
E.3. Monthly expenses	I. Applicant	II. Spouse or cohabitee	III. Dependent persons	IV. Persons supporting the applicant					
Taxes:									
Social security contributions:									
Local taxes:									
Mortgage costs:									
Rent and housing costs:									
Education costs:									
Childcare costs:									
Instalments:									
Repayment of loans:									
Maintenance paid to other persons under a legal obligation:									
Other expenses:									
TOTAL:									

I declare on my honour that the information provided is true and complete and I undertake to declare without delay to the competent authority processing the application any changes in my financial situation.

Prepared at .....

Date .....

Signature .....

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

The request for public legal aid is expressed in writing and will include mentions regarding the subject-matter and nature of the proceedings for which public legal aid is requested, the identity, personal number, domicile and financial status of the applicant and his/her family, attaching supporting documents of his /her and his/her family's income, and evidence of the maintenance or payment obligations. The application will also be accompanied by a declaration on honour from the applicant, indicating whether he/she received any public legal aid in the past 12 months, in what form, for what matter and the amount of that aid.

The court may request any clarifications and evidence from the parties, or written information from competent authorities.

**Extrajudicial assistance** is granted by the Legal Aid Service established within each bar association based on an application whose model is approved by the Legal Aid Coordination Department, which will include mentions regarding the subject-matter and nature of the aid application, the identity, personal number, domicile and financial status of the applicant and his/her family, supporting documents being attached thereto for his/her and his/her family's income, and evidence of the maintenance or payment obligations.

The application will also be accompanied by a declaration on honour from the applicant, indicating whether he/she received any public legal aid in the past 12 months, in what form, for what matter and the amount of that aid.

The applicant will provide evidence of his/her financial status principally by means of the following documents:

- an attestation of income for the applicant and the other members of his/her family; the family register and, where applicable, the children's birth certificates; the applicant's or child's certificate of disability, where applicable; a declaration on honour showing that the applicant and his/her other family members do not receive additional income; a declaration on honour regarding the assets of the applicant and his/her family; a declaration on honour showing that the applicant and/or the other parent declare(s) that the child is not entrusted or placed in the care of another authorised private body or public service, or of any legal person; proof provided by the competent authorities on the statement of the taxable assets on the name of the applicant or, where applicable, on the name of his/her other family members; other documents required to establish the right to legal aid under the law.

*(Article 14 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented, and Article 73 of Law No 51/1995 for the organisation and practice of the profession of lawyer, as subsequently amended and supplemented).*

## 8 Where do I submit my application for legal aid?

The public legal aid application is addressed to the competent court settling the case for which the aid is requested; for the public legal aid requested for the enforcement of a judgment, the application falls within the remit of the enforcing court. Where the competent court cannot be determined, settlement lies with the district court in whose territorial jurisdiction the applicant has his/her domicile or residence.

If public legal aid is requested in ongoing legal proceedings, the application(s) for public legal aid, where applicable, is/are settled by the panel entrusted with the settlement of the main application.

Public legal aid is granted at any time during the proceedings, from the date when the application was submitted by the interested party, and is maintained throughout the entire procedural stage at which it was requested. The application for public legal aid is exempted from the stamp fee.

Public legal aid for recourse to judicial review procedures may be granted in the form of a new application. The application for public legal aid for recourse to judicial review procedures is addressed to the court whose judgment must be appealed against within the time limit for lodging an appeal and is settled as a matter of urgency by a panel other than that who settled the case on its merits.

By submitting the application for public legal aid, the time limit for lodging an appeal is discontinued only once if the applicant submits the supporting documents within not more than ten days. A new time limit for lodging an appeal starts to run from the date of communication of the conclusion settling the application for public legal aid or, where applicable, the application for a review in the sense of admission or rejection.

If the application for public legal aid is admitted, the court immediately communicates the conclusion to the applicant and to the bar association. The bar association must appoint a lawyer within 48 hours, who is entitled to plead before any court of appeal, as the case may be. The date of appointment of the lawyer and their particulars are communicated to the court and to the applicant within not more than 48 hours. A new time limit for lodging an appeal starts to run from the date when the lawyer is appointed.

Extrajudicial assistance is granted by the Legal Aid Service established within each bar association based on an application whose model is approved by the Legal Aid Coordination Department, which will include mentions regarding the subject-matter and nature of the aid application, the identity, personal number, domicile and financial status of the applicant and his/her family, supporting documents being attached thereto for his/her and his/her family's income, and evidence of the maintenance or payment obligations.

The application will also be accompanied by a declaration on honour from the applicant, indicating whether he/she received any public legal aid in the past 12 months, in what form, for what matter and the amount of that aid.

The application for extrajudicial assistance is submitted to the Legal Aid Service and settled within not more than 15 business days from the registration date under an admission or rejection decision, where applicable. The decision is served on the applicant within five business days from the date of issue of the decision. The decision rejecting the application for extrajudicial assistance may be contested before the Bar Association Board within five days from its notification. Objections to the rejection decision are settled by the Bar Association Board, as a matter of urgency, during the first meeting of the Bar Association Board.

*(Articles 11, 12 and 13 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented, and Article 73 of Law No 51/1995 for the organisation and practice of the profession of lawyer, as subsequently amended and supplemented).*

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

The court rules on the application for public legal aid, without summoning the parties, under a reasoned conclusion delivered in chambers. An application for a review may be submitted by the interested party against the conclusion rejecting the application for public legal aid within five days from the date when the conclusion was served. The application for a review is settled in chambers by another panel and the court delivers an irrevocable conclusion.

If the application for public legal aid was approved for aid in the form of assistance by a lawyer, that application and the approval conclusion are immediately sent to the chairman of the bar association within the jurisdiction of that court. The chairman of the bar association or the lawyer entrusted with this task by the chairman will appoint a lawyer listed in the Legal Aid Register within three days, to whom they send the conclusion together with the notice of appointment. The chairman of the bar association must also inform the recipient of the public legal aid of the name of the appointed lawyer. The recipient of the public legal aid may request themselves the appointment of a certain lawyer, with the latter's consent under the law.

The application for extrajudicial assistance is submitted to the Legal Aid Service within each bar association and settled within not more than 15 business days from the registration date under an admission or rejection decision, where applicable. The decision is served on the applicant within five business days from the date of issue of the decision. The chairman of the competent bar association appoints a lawyer from the Legal Aid Register of the bar association under the decision granting extrajudicial assistance. The chairman of the bar association may approve, if possible, extrajudicial assistance to be granted by a lawyer chosen by the person to whom legal aid is granted.

*(Article 15 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented, and Article 73 of Law No 51/1995 for the organisation and practice of the profession of lawyer, as subsequently amended and supplemented).*

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

**Public legal aid in the form of assistance by a lawyer** is granted in accordance with Law No 51/1995 on the organisation and practice of the profession of lawyer, as republished, as subsequently amended and supplemented, which concerns legal aid or free legal aid.

If the application for public legal aid was approved for aid in the form of assistance by a lawyer, that application and the approval conclusion are immediately sent to the chairman of the bar association within the jurisdiction of that court. The chairman of the bar association or the lawyer entrusted with this task by the chairman will appoint a lawyer listed in the Legal Aid Register within three days, to whom they send the conclusion together with the notice of appointment. The chairman of the bar association must also inform the recipient of the public legal aid of the name of the appointed lawyer. The recipient of the public legal aid may request themselves the appointment of a certain lawyer, with the latter's consent under the law.

**Assistance by a lawyer may also be extrajudicial assistance** and consists in providing consultation, submitting requests, petitions or notifications or initiating other such legal action, and in representing clients before public authorities or institutions, other than judicial authorities or authorities having judicial powers, in order to ensure the exercise of certain rights or legitimate interests. Extrajudicial assistance must result in the provision of clear and accessible information to the applicant in accordance with the legal provisions in force regarding competent institutions and, if possible, the requirements, time limits and procedures provided for by the law for the recognition, granting or exercise of the right or interest, as alleged by the applicant. Extrajudicial assistance is granted in accordance with Law No 51/1995, as republished, as subsequently amended and supplemented.

The application for extrajudicial assistance is submitted to the Legal Aid Service within each bar association and settled within not more than 15 business days from the registration date under an admission or rejection decision, where applicable. The decision is served on the applicant within five business days from the date of issue of the decision. The decision rejecting the application for extrajudicial assistance may be contested before the Bar Association Board within five days from its notification. Objections to the rejection decision are settled by the Bar Association Board, as a matter of urgency, during the first meeting of the Bar Association Board.

The chairman of the competent bar association appoints a lawyer from the Legal Aid Register of the bar association under the decision granting extrajudicial assistance. The chairman of the bar association may approve, if possible, extrajudicial assistance to be granted by a lawyer chosen by the person to whom legal aid is granted.

**When the public legal aid application is approved in the form of a fee paid to the expert, translator or interpreter,** the conclusion approving the aid also establishes the provisional fee due to them. The court will determine the final fee after the provision of the service for which the provisional fee has been paid.

**When the public legal aid application is approved in the form of a fee paid to the bailiff,** the conclusion approving the aid also establishes the provisional fee due to the bailiff depending on the complexity of the case on that date. The application and the approving conclusion are sent as soon as possible to the territorial chamber of bailiffs within the territorial jurisdiction of that court. The board of the territorial chamber of bailiffs must appoint a bailiff within three days, to whom they send the respective conclusion together with the notice of appointment. The chairman must also inform the recipient of the public legal aid of the name of the appointed bailiff. The recipient of the public legal aid may request themselves the appointment of a certain bailiff with territorial competence. After the bailiff has discharged their duties under the law and their regulations, the court will determine the final fee, at the bailiff's request, depending on the complexity of the case and the work volume completed, within the limits of the fees determined under the law.

**When the application granting facilities on payment of legal costs is approved,** the conclusion will determine either the exemption from payment or the discount rate, payment deadlines and the value of instalments, where applicable. Where the payable legal costs exceed the double value of the applicant's monthly net income per family in the month prior to the submission of the public legal aid application, the payment will be staggered such that the payable monthly instalment does not exceed half of the net income per family, unless the court deems it necessary to grant other more favourable form of aid. The payment of the legal costs can be staggered in not more than 48 monthly instalments.

*(Articles 23, 24, 25, 16, 17, 32, 33, 34 and 35 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented, and Articles 71 and 73 of Law No 51/1995 for the organisation and practice of the profession of lawyer, as subsequently amended and supplemented).*

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

Public legal aid in the form of assistance by a lawyer is granted in accordance with Law No 51/1995 on the organisation and practice of the profession of lawyer, as republished, as subsequently amended and supplemented, which concerns legal aid or free legal aid.

If the application for public legal aid was approved for aid in the form of assistance by a lawyer, that application and the approval conclusion are immediately sent to the chairman of the bar association within the jurisdiction of that court. The chairman of the bar association or the lawyer entrusted with this task by the chairman will appoint a lawyer listed in the Legal Aid Register within three days, to whom they send the conclusion together with the notice of appointment. The chairman of the bar association must also inform the recipient of the public legal aid of the name of the appointed lawyer. The recipient of the public legal aid may request themselves the appointment of a certain lawyer, with the latter's consent under the law.

As regards extrajudicial assistance, the chairman of the competent bar association appoints a lawyer from the Legal Aid Register of the bar association under the decision granting extrajudicial assistance. The chairman of the bar association may approve, if possible, extrajudicial assistance to be granted by a lawyer chosen by the person to whom legal aid is granted.

*(Articles 23 and 35 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented, and Articles 71 and 73 of Law No 51/1995 for the organisation and practice of the profession of lawyer, as subsequently amended and supplemented).*

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

Public legal aid may be provided in the following forms:

- a) payment of the fee for representation, legal assistance and, where applicable, defence by an appointed or selected lawyer in order to ensure the exercise or safeguarding of a right or legitimate interest in court or to prevent a dispute, hereinafter assistance by a lawyer;
- b) payment provided to the expert, translator or interpreter resorted to throughout the proceedings, with the approval of the court or judicial authority, if such payment is lawfully incumbent upon the person applying for public legal aid;
- c) payment of the bailiff's fee;
- d) exemptions from, reductions in, rescheduling or deferral of payment of legal costs, as provided for by the law, including those due at the enforcement stage.

Where public legal aid is provided to citizens of EU Member States or to other persons who are domiciled or habitually reside within the territory of a Member State, the approved public legal aid may also include:

- a) expenses for translation of the documents submitted by the recipient, which were requested by the court or by the judicial authority for the resolution of the case, and related requests and documents submitted or received in accordance with this chapter are exempted from the legalisation formality or from any other equivalent formality;
- b) an interpreter's services in the proceedings conducted before the court/judicial authority;
- c) expenses incurred with travelling that the recipient of the assistance or another person must undertake to Romania at the request of the court or judicial authority, or where the law requires the mandatory presence of either of these persons

Public legal aid may be provided, either separately or cumulatively, in any of the above-mentioned forms. The value of the public legal aid provided, either separately or cumulatively, in any of the forms of assistance by a lawyer, expert, translator, interpreter or bailiff, may not exceed the maximum equivalent level of ten national gross minimum salaries over a one-year period in the year when the aid application was lodged.

*(Articles 6, 7, 44 and 47 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented).*

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

The expenses for which the party has been granted exemptions or discounts with the approval of the public legal aid will be imposed on the other party if the latter is unsuccessful. The unsuccessful party will be bound to pay these amounts to the State.

If the party who has received the public legal aid is unsuccessful, the proceedings costs incurred by the State are to be borne by the former. However, the court may decide, with the resolution of the case, to bind the party who has received the public legal aid to refund in whole or in part the expenses incurred by the State if, by their non-diligent conduct during the proceedings, the party has triggered the loss of case or if a judgment has ascertained the abusive conduct of the action.

*(Articles 18 and 20 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented).*

#### **14 Does legal aid also cover appeals?**

If the judgment delivered in the case for which public legal aid has been approved is submitted to an appeal procedure, the public legal aid granted at the preceding procedural stage in the prescribed form of assistance by a lawyer is lawfully extended to cover the drawing up of the application and of the reasons for the appeal as well as the recourse to and conduct of the appeal procedure.

The judgment delivered with a right to appeal and the copy of the conclusion approving the public legal aid are notified immediately to the bar association for verification and acknowledgment purposes or, where applicable, to appoint a lawyer entitled to plead before a court of appeal. For the appeal procedure, the lawyer is entitled to a separate fee that is determined by the court of appeal under the law.

If the party has not received public legal aid at the preceding procedural stage of the appeal procedure, the public legal aid is requested by submitting a new application.

A new time limit for lodging an appeal starts to run from the date when the lawyer is appointed or acknowledged. The date of appointment of the lawyer and their particulars are communicated to the court and to the applicant within not more than 48 hours.

The court of appeal checks whether the requirements for the granted public legal aid are still met. If the court finds that the requirements are no longer met, it decides in a conclusion to terminate the aid and to bind the party to refund in whole or in part the expenses incurred by the State in the form of a lawyer's fee. (*Article 131 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented*).

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

The right to public legal aid is extinguished with the death of the party or with the improvement of that party's financial status to such an extent that they can afford the legal costs.

On reception of the application for public legal aid, the applicant is informed that, if he/she loses the case, the legal costs of the other party will be borne by him/her and a possibility will be envisaged for him/her to refund the amounts received as public legal aid where an interested party refers to the court which approved the public legal aid and submits evidence regarding the actual status of the person for whom the application was approved; legal public aid is not suspended during the new investigations.

If the court finds that the application for public legal aid was submitted in bad faith, by concealing the truth, it will issue a conclusion binding the person who received unjustifiably the public legal aid to refund the amounts from which he/she was exempted as compensation and to pay a fine of up to five times the amount for which he/she received the exemption unjustifiably. Only an application for a review can be filed against the conclusion, with the possibility of requesting, on a reasoned basis, a review of or a decision to reduce the compensation or fine. The application is submitted within five days from the date when the conclusion is notified and is settled by another panel under an irrevocable conclusion.

Where, under a final and irrevocable judgment, the recipient of the public aid acquires assets or claims the value or amount of which exceeds the value of the public aid granted by ten times, he/she is bound to refund the public aid. The reimbursement procedure is that laid down in Chapter III of this Emergency Order.

(*Articles 10, 14, 17 and 50(2) of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented*)

#### **16 Can I contest a refusal to give legal aid?**

The court rules on the application for public legal aid, without summoning the parties, under a reasoned conclusion delivered in chambers. An application for a review may be submitted by the interested party against the conclusion rejecting the application for public legal aid within five days from the date when the conclusion was served. The application for a review is settled in chambers by another panel and the court delivers an irrevocable conclusion.

Public legal aid may be refused when it is abusively requested, when its estimated cost is disproportionate to the value of the subject-matter of the case and when it is not requested in order to safeguard a legitimate interest, or is requested for an action that is contrary to public or constitutional order.

If the claim for the settlement of which public legal aid is requested falls within the category of those that may be subjected to mediation or other alternative dispute resolution procedures, the application for public legal aid is likely to be rejected if proof is provided that the applicant for public legal aid had refused to conduct such procedure before the initiation of legal proceedings.

Public legal aid may be rejected when the applicant claims damages for injury to his/her image, honour or reputation, considering that he/she has not suffered any material injury, and when the application arises out of the applicant's trade or self-employed profession.

Where public legal aid is granted to citizens of EU Member States or to other persons who are domiciled or habitually resident within the territory of a Member State, the Romanian central authority may refuse to transmit a legal aid application to another Member State if such application is clearly unfounded or exceeds the scope of Council Directive 2002/8/EC. If the legal aid application is rejected by the competent authority of the requested Member State, the Romanian central authority will ask the applicant to refund the translation expenses.

(*Articles 15, 16, 45 and 46 of Emergency Order No 51/2008 on public legal aid in civil matters, as approved by Law No 193/2008, as subsequently amended and supplemented*).

#### **Additional information**

##### **Useful links:**

National Union of Bar Associations in Romania (*Uniunea Națională a Barourilor din România*), <http://www.unbr.ro>

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Member States in charge of the management of national content pages are in the process of updating some of the content on this website in the light of the withdrawal of the United Kingdom from the European Union. If the site contains content that does not yet reflect the withdrawal of the United Kingdom, it is unintentional and will be addressed.

#### **Legal aid - Slovakia**

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

The costs of proceedings are, in particular, the expenses of the parties and their representatives, including court fees, the lost earnings of the parties and their legal representatives, the cost of gathering evidence, notarial expenses and fees for acts executed as a court commissioner, fees and expenses of the executor in inheritance proceedings, interpreting fees and representation fees where representation is by a lawyer.

The parties to the proceedings pay the costs of the proceedings that they personally incur and those of their representatives. Shared costs are paid by the parties in proportion to their involvement in the case and the proceedings.

Where parties are assigned a lawyer to represent them, the State covers the lawyer's expenses and representation fee.

In inheritance proceedings, the notarial fees and expenses are paid by the heir, provided the estate is not insolvent. If there are several heirs, they pay these costs in proportion to the net value of their share of the estate. In other cases these costs are borne by the State.

## **2 What exactly is legal aid?**

The term 'legal aid' is defined in Act No 327/2005 on the provision of legal aid to persons in material need and amending Act No 586/2003 on the legal profession and amending Act No 455/1991 on trading activity (the Trading Act), as amended by Act No 8/2005, which took effect on 1 January 2006 (the 'Legal Aid Act'). Section 4(a) of the Legal Aid Act reads as follows: 'Legal aid means the provision of legal services to persons entitled under this Act in respect of the exercise of their rights, including, in particular, legal advice, assistance with out-of-court proceedings, the drawing up of submissions for courts, representation in court proceedings and the performance of acts in connection therewith, as well as defrayment in full or in part of the associated costs.'

## **3 Do I have a right to legal aid?**

Under the conditions laid down in the Legal Aid Act, in the case of in-country disputes, legal aid may be granted to any natural person, whereas in the case of cross-border disputes it may be granted only to natural persons domiciled or habitually resident in a Member State (this includes all Member States of the European Union except Denmark).

'Eligible persons' are natural persons granted entitlement to legal aid by a final decision of the Legal Aid Centre upon proving that they meet the conditions laid down in Section 6 of the Legal Aid Act.

'Foreign eligible persons' are natural persons who meet the conditions laid down in the Legal Aid Act for entitlement to legal aid in a cross-border dispute and whose entitlement has been granted by a final decision of the Legal Aid Centre.

'In-country eligible persons' are natural persons who are permanently or temporarily resident in the Slovak Republic and seek legal aid in another Member State in which the competent court is handling the cross-border dispute.

## **4 Is legal aid granted for all types of proceedings?**

Under the Legal Aid Act, legal aid may be granted in civil law, labour law and family law cases, debt discharge proceedings under special legislation, in proceedings before an administrative court and, in such cases, also in proceedings before the Constitutional Court of the Slovak Republic ('in-country disputes'). In cross-border disputes, legal aid may be granted under the Legal Aid Act in civil law, family law, commercial law and asylum cases, in administrative expulsion proceedings, in proceedings relating to the detention of a third-country national, in proceedings relating to an applicant's detention, in proceedings relating to the granting of asylum and, in such cases, also in proceedings before an administrative court and proceedings before the Constitutional Court of the Slovak Republic, and to persons in respect of whom the validity of a labour-law act has been suspended under special legislation in proceedings concerning the submission of an application for an emergency measure.

## **5 Are there special procedures in cases of need?**

Yes, where applicants are at risk of missing a deadline, they may apply to the Legal Aid Centre for provisional legal aid at the same time as submitting their application. The Legal Aid Centre then takes a decision without undue delay on granting provisional legal aid, before taking its decision on granting legal aid entitlement.

## **6 Where can I obtain a legal aid application form?**

Applications are available on the [Legal Aid Centre's](#) website.

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

These must be documents that substantiate the information given in the application form and prove the applicant's material need (documents proving material need may not be more than three months old).

## **8 Where do I submit my application for legal aid?**

At the Legal Aid Centre office nearest to where the applicant is permanently or temporarily resident.

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

The Legal Aid Centre decides whether to grant legal aid within 30 days of receiving the application.

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

Upon invitation by the Legal Aid Centre, applicants must conclude a legal aid contract directly with the Centre or with an appointed lawyer and grant power of attorney to the Centre or appointed lawyer for the acts associated with the granting of the legal aid.

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

In the decision granting entitlement to legal aid, the Legal Aid Centre appoints a lawyer to represent the eligible person in court, where necessary to safeguard their interests.

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

The Legal Aid Centre's decision either grants full entitlement to legal aid or it refuses entitlement.

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

Not applicable

## **14 Does legal aid also cover appeals?**

Yes, legal aid is also granted for appeal proceedings and enforcement proceedings.

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

The circumstances under which legal aid may be withdrawn are governed by Section 14 of the Legal Aid Act. The Legal Aid Centre may decide to withdraw legal aid in the following circumstances: if the eligible person fails to cooperate with the Centre or appointed lawyer as required; if, in the course of the legal aid being provided, there are changes in the eligible person's income and financial circumstances and he or she no longer meets the condition laid down in Section 6(1)(a) for the legal aid entitlement to continue; if the eligible person fails to conclude a contract with the appointed lawyer or fails to grant power of attorney to the Centre or the appointed lawyer within three months of the final decision granting legal aid being issued; if it emerges that the applicant was granted entitlement to legal aid on the basis of false or incomplete information; or if the eligible person fails to act on the request referred to in Section 13(3) (i. e. the Centre's request to be provided within 8 days with evidence demonstrating that the eligible person still qualifies for legal aid).

## **16 Can I contest a refusal to give legal aid?**

A decision refusing legal aid must contain the particulars stipulated in special legislation (i.e. Administrative Procedure Act No 71/1967 (Code of Administrative Procedure), as amended), and it must inform the applicant that, unless there is a change in their income or financial circumstances, they may not re-submit an application for the same case until six months after the decision is issued.

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## Legal aid - Finland

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

The costs of legal proceedings vary depending on the nature and extent of the case. Legal costs include, for example, the fees and expenses of legal assistance, costs arising from compensations for witnesses, as well as from interpretation and translation services, handling charges and document charges collected by authorities, and enforcement fees payable to the state. Legal assistance fees account for the majority of the costs involved in legal proceedings. As a rule, each party bears their own legal costs. However, the court may order the losing party to pay the costs incurred by the opposing party.

### 2 What exactly is legal aid?

Legal aid is provided at the expense of the state to persons who need expert assistance in a legal matter but who are unable to meet the costs of proceedings due to their financial situation. Legal aid covers legal advice, the necessary measures and representation before courts and other authorities, as well as exemption from the costs of proceedings. Means-testing is not required when minor legal advice is provided to the applicant by telephone or other electronic means of communication.

### 3 Do I have a right to legal aid?

Legal aid is provided in matters within the Finnish jurisdiction to persons with a municipality of residence in Finland and to persons domiciled or habitually resident in another Member State of the European Union (EU) or the European Economic Area (EEA). In addition, legal aid is provided if the matter is to be heard before a Finnish court or if there are special reasons for legal aid. In cases considered abroad, legal aid covers the provision of general legal advice. Legal aid is not provided to a company or a corporation. Legal aid is provided to an entrepreneur in a business matter, other than a court case, only if there are special reasons for doing so.

Legal aid is provided on application, free of charge or against a deductible, on the basis of the applicant's financial status. The applicant's financial situation is assessed on the basis of the funds available to them per month (available means) and their assets. As a general rule, the available means are calculated on the basis of the monthly income, necessary expenses, and maintenance liability of the applicant and their spouse or cohabitant. Legal aid is provided to persons whose available means and assets do not exceed the amount determined by government decree. Further provisions on the income and expenses to be taken into account, the impact of maintenance liability on the calculation of available means, the consideration of assets, and the criteria for determining the deductible of the legal aid recipient are laid down by government decree.

Legal aid is not provided if the applicant has legal expenses insurance that covers the matter at hand. However, in a matter heard by a court, the court may grant legal aid to the extent that the costs of proceedings exceed the maximum cover stated in the insurance policy. Where the applicant is entitled to legal aid without payment on the basis of their financial status, legal aid may also be granted to cover the deductible stated in the insurance policy.

### 4 Is legal aid granted for all types of proceedings?

Legal aid is available in cases heard before a court, as well as in legal matters outside court.

Legal aid is not provided if:

- (1) the matter is of minor importance to the applicant;
- (2) it would be manifestly pointless in proportion to the benefit to the applicant;
- (3) pleading the case would constitute an abuse of process; or
- (4) the case is based on an assigned right and there is reason to believe that the purpose of the assignment was to receive legal aid.

As a rule, legal aid does not cover representation in:

- (1) a petitionary matter handled in a general court;
- (2) a simple criminal case;
- (3) a matter concerning taxation or a public charge; or
- (4) a matter where the right to request a rectification or the right of appeal is based on a membership of a municipality or another public corporation.

Even then, a public legal counsel may provide legal advice and draw up any required documents, if necessary.

### 5 Are there special procedures in cases of need?

The legal aid applicant must inform the legal aid office [*oikeusaputoimisto*] of any urgency of the matter.

### 6 Where can I obtain a legal aid application form?

The legal aid application form can be obtained from <https://oikeus.fi/fi/index/lomakkeet/oikeusapu.html>

The legal aid application form is also available from the legal aid office. Contact information for the offices is available at <https://oikeus.fi/oikeusapu/fi/index/yhteystiedot.html>

Legal aid can also be applied for via the electronic service at

<https://oikeus.fi/oikeusapu/fi/index/asiointi/oikeusavunsahkoinenasiointi.html>

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

In the legal aid application, the applicant must provide information on their financial circumstances and the matter for which legal aid is being applied, as well as on legal expenses insurance (see Question 6 on the legal aid application forms). At the request of the legal aid office, the applicant must also provide a statement of their income and expenses, as well as of their assets and liabilities. Notwithstanding any provisions on confidentiality, the legal aid office has the right to obtain any information that is necessary to establish the applicant is entitled to legal aid on the basis of their financial status and whether the applicant has a legal expenses insurance that covers the matter at hand.

### 8 Where do I submit my application for legal aid?

Legal aid can be applied for from any legal aid office. Contact information for the offices is available at <https://oikeus.fi/oikeusapu/fi/index/yhteystiedot.html>

Legal aid can also be applied for via the electronic service at

<https://oikeus.fi/oikeusapu/fi/index/asiointi/oikeusavunsahkoinenasiointi.html>

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

The legal aid office decides on the granting of legal aid. The decision is sent to the contact address notified by the applicant.

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

In order to establish their right to legal aid, the applicant or their representative should contact the legal aid office.

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

Legal aid is provided by public legal counsels. However, in matters to be considered by a court, a private legal counsel who has consented to the task may also be appointed to give legal assistance. Only a lawyer or a licensed legal counsel may be appointed as a private legal counsel. Where the legal aid recipient has proposed a qualified person to be their legal counsel, that person must be appointed, unless specific reasons require otherwise. In their task, the legal counsel is obliged to comply with proper conduct as lawyer.

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

Legal aid covers the necessary legal costs of the applicant, as required by the case. The legal aid recipient's deductible from the costs of legal proceedings is determined on the basis of their financial situation. Legal aid does not cover the legal costs of the opposing party.

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

The legal aid recipient's deductible from the costs of legal proceedings is determined on the basis of their financial situation. If legal aid has been provided by a public legal counsel, the legal aid recipient must pay the deductible to the legal aid office. If legal aid has been provided by a private legal counsel, the legal aid recipient must pay the deductible to the legal counsel in question.

### 14 Does legal aid also cover appeals?

Legal aid covers all necessary legal costs of the applicant, as required by the case. The legal aid recipient's deductible from the costs of legal proceedings is determined on the basis of their financial situation.

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

If it is found that the prerequisites for granting legal aid did not exist, or if the circumstances have changed or ceased to exist, the legal aid office or the court may amend the legal aid decision or decide that the provision of legal aid is to cease. When the deductible of a legal aid recipient is amended, a decision is made on whether the amendment is to be applied retroactively. When it is decided to cease legal aid, a decision is made on whether the recipient must compensate the state for legal aid received and the amount of that compensation is determined.

### 16 Can I contest a refusal to give legal aid?

If legal aid is not granted in accordance with the application, the applicant may submit the question of legal aid to a court for a decision. The decision of the legal aid office is accompanied by instructions on submitting a decision of the legal aid office to a court for reconsideration (*submission*). The submission must be filed with the legal aid office that made the decision. The legal aid office forwards the submission to the court for a decision.

## Further information

In criminal proceedings, the court may appoint a public defender for the suspect and a legal counsel and a support person for the victim for the pre-trial investigation and the trial. Only a public legal counsel, a lawyer or, for a special reason, a licensed legal counsel may be appointed as the defender or as the legal counsel of the victim. The support person must be qualified for the task. If the court finds the suspect guilty of the criminal offence for which they were assigned a defender for the pre-trial investigation and the trial, they are obliged to reimburse the state for the compensations paid from state funds. If the suspect meets the financial prerequisites for legal aid, the amount of reimbursement may not exceed that provided for by legal aid.

Further information on legal aid is available at <https://oikeus.fi/oikeusapu/fi/index.html>

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## Legal aid - Sweden

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

In Sweden, court proceedings themselves are free of charge apart from an application fee, which is currently SEK 2,800 (approximately EUR 265). For cases where the subject of the dispute has a value not exceeding SEK 23,250 (EUR 2,200), the application fee is SEK 900 (EUR 85).

If you are granted legal aid, the State will pay the application fee.

### 2 What exactly is legal aid?

The following types of legal assistance are available for disputes (civil cases):

- Advice;
- Legal aid.

Both types are regulated by the [Legal Aid Act \(rättshjälpslagen\) \(1996:1619\)](#).

### 3 Do I have a right to legal aid?

#### Advice

Everyone – natural persons, associations, businesses, etc. – can obtain advice for any legal matter.

Advice can be given by a lawyer or assistant lawyer at a law firm. It can be given for up to two hours, and may be split into several sessions. A fee is charged for the advice. The fee is currently SEK 1,725 (approximately EUR 164) per hour. The fee may be halved if the party receiving the advice has insufficient funds. Children who receive advice do not usually need to pay any fee. If the fee is reduced, the lawyer or assistant who gave the advice will claim the remainder from the State.

#### Legal aid

Legal aid is only available to natural persons, so businesses, associations, etc. cannot receive this type of assistance. The estate of a deceased person may also be eligible for legal aid in certain circumstances. Nationals of all EU Member States have the same status as Swedish nationals with regard to legal aid. Legal aid may be granted for most legal matters (please also see question 4).

Certain conditions must be met for legal aid to be granted.

You must have received at least one hour's worth of advice;

Your income must not exceed the financial threshold, which is currently SEK 260,000 SEK (approximately EUR 27,375). All of the applicant's financial circumstances are taken into consideration when calculating income. For example, consideration is given to child-maintenance costs, wealth and debts;

You must need legal assistance as well as advice and it must not be possible to meet this need in any other way;

It must be considered reasonable for the State to contribute to the costs, given the nature and significance of the matter in question, the value of the subject of the dispute, and the other circumstances;

If you have – or should have had – a legal-protection insurance policy, it must be used first.

### 4 Is legal aid granted for all types of proceedings?

#### Advice

As mentioned under question 3 above, advice may be given for all legal matters.

For example, information and advice can be given on the following:

Rules relating to marriage and other types of cohabitation;

Rules relating to divorce;

Maintenance contributions;  
Wills and legacies;  
Purchases and contracts.

### **Legal aid**

As mentioned under question 3 above, legal aid may be granted for most legal matters, but there are some exceptions. For example, legal aid cannot be granted for matters that could involve the assistance of a public defender or public counsel. If you have been the victim of a crime, a 'counsel for the injured party' (*målsägandebitråde*) may be appointed in certain cases (please see [Act 1988:609 on Counsels for the Injured Party \(\*Jagen 1988:609 om målsägandebitråde\*\)](#)). This counsel is free of charge for the victim. Their duties include helping you to pursue a civil claim as the result of a crime, such as a claim for damages. You cannot also be granted legal aid if a counsel for the injured party has been appointed for you.

In some cases there have to be special reasons for legal aid to be granted. Examples include matters that must be dealt with abroad, or cases where the value of the claim will clearly not exceed SEK 23,250 (approximately EUR 2,200).

### **5 Are there special procedures in cases of need?**

There are no special procedures in cases that require the immediate processing of an application for legal aid. On the other hand, it follows from the general principles of procedural law that a case or proceedings must be handled as quickly as possible.

### **6 Where can I obtain a legal aid application form?**

The Swedish National Courts Administration (*Domstolsverket*) has produced a simple [application form](#) with instructions for filling it in. The form is available from both the Legal Aid Authority (*Rättshjälpsmyndigheten*) and the courts. The form can also be requested from the [Swedish National Courts Administration](#).

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

As mentioned under question 6, the Swedish National Courts Administration offers, among other things, a simple [application form](#), which also contains instructions for filling it in. Please contact the [Swedish National Courts Administration](#) for further information.

Among other things, an application for legal aid must contain information about the legal matter to which the application relates, whether the matter in question might have to be dealt with abroad, whether any advice has been provided on the matter, whether you have or have had a legal-protection insurance policy covering the matter in question, and information about your financial and other circumstances. The latter information must be provided on a [form](#) that can be obtained from the Swedish National Courts Administration.

No other documents need to be enclosed. It may, however, be appropriate to enclose any other documentation that is available to support the information supplied.

### **8 Where do I submit my application for legal aid?**

[The application for legal aid](#) must be sent to the court or authority that is competent to assess your application for legal aid.

If a case or proceedings relating to the civil matter in question is underway at a court, the court must assess the application for legal aid. Otherwise, it is the [Legal Aid Authority](#) that decides whether or not legal aid should be granted.

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

The Legal Aid Authority or court assessing your application for legal aid will notify you in writing of the decision that it makes.

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

If you are granted legal aid, a legal-aid counsel will be appointed at the same time. You should therefore consult him/her for further information.

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

A lawyer, assistant lawyer or any other suitable person may be appointed as a legal-aid counsel. If you have proposed a suitable person yourself, he/she must be appointed if this will not significantly increase the costs and if there are no other particular reasons for not doing so.

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

The State will bear the following costs where legal aid is granted:

Remuneration of the legal-aid counsel for up to 100 hours' work, unless otherwise determined by the court;

Reasonable costs for giving evidence to a general court, the Swedish Labour Court (*Arbetsdomstolen*), or the Swedish Market Court (*Marknadsdomstolen*);

Investigation costs reasonably incurred in order to safeguard your rights, up to a maximum of SEK 10,000 (approximately EUR 1,053);

Costs of mediation pursuant to Section 17 of Chapter 42 of the [Swedish Code of Judicial Procedure \(\*rättegångsbalken\*\)](#);

Application and service fees, as well as enforcement costs.

On the other hand, you will have to bear any costs that are not covered by legal aid. It is, however, possible to recover these costs from the other party if you win the case.

If you are granted legal aid, you must contribute to the costs by paying a fee for legal aid. This fee consists of a percentage of the costs of your legal-aid counsel. The fee system has six levels depending on your income; these are expressed in fixed income brackets in Swedish kronor (SEK). The percentages for the various brackets range from 2% to 40%. The income bracket that you are placed in, and thus the percentage that you will have to pay, is determined on the basis of your financial means. They are calculated on the basis of your annual income, your dependents, and your financial assets. You must pay the legal-aid fee continuously to your legal-aid counsel as the costs arise.

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

If you are granted legal aid, it means that you have access to all of the benefits covered by the Swedish legal-aid system (please see question 12 above).

Accordingly, it is not possible to receive legal aid for a particular part only.

On the other hand, there is the possibility, in addition to the legal-aid system, of obtaining financial assistance for certain costs relating to legal proceedings, namely travel costs to the court and the costs for a witness summoned to appear in court. If you are party to a case or proceedings and you have been summoned to appear at a court session, you can therefore have your **travel and subsistence** costs paid for by the State if it is deemed appropriate (please see Section 6 of Chapter 11 of the [Swedish Code of Judicial Procedure](#)). If it is appropriate to do so in view of your financial circumstances, the State may also pay **compensation to a witness** for necessary costs incurred for travel, subsistence and loss of time (please see Section 24 of Chapter 36 of the [Swedish Code of Judicial Procedure](#)). Compensation for travel and subsistence costs in connection with an appearance in court is not available to legal persons.

### **14 Does legal aid also cover appeals?**

Yes, but compensation for the legal-aid counsel only covers a maximum of 100 hours. If the 100 hours have been used up during the first-instance proceedings, any higher-instance proceedings will not be covered.

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

Legal aid must naturally end when the legal matter in question is regarded as having concluded. As a general rule, legal aid must also end once your legal-aid counsel has done 100 hours' worth of work. The court may, however, decide that legal aid can continue.

In some cases, legal aid must also end before that point. This happens if, for example, you do not pay your legal-aid fee or if you provide incorrect information and legal aid would not have been granted if the correct information had been provided. Another example of when legal aid must end early is if your legal-aid counsel has done 100 hours' worth of work and the court has not decided that the legal aid should continue.

### 16 Can I contest a refusal to give legal aid?

Yes. You are entitled to appeal against a decision not to grant legal aid. If the decision has been made by a court, it should be appealed against in the same way as other decisions. When the court notifies you of the decision in writing, it will also provide information on how to appeal against the decision. If, instead, the decision has been made by the Legal Aid Authority, it should be appealed against to the [Legal Aid Board \(Rättshjälpsnämnden\)](#).

#### Further information

For further information about the Swedish legal-aid system, and to order application forms, please contact the Swedish National Courts Administration at the following address:

#### Swedish National Courts Administration

SE-551 81 JÖNKÖPING, Sweden

<https://www.domstol.se/>

Tel: +46 36 15 53 00

Fax: +46 36 16 57 21

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### Legal aid - England and Wales

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

The costs will depend upon the exact nature of the case. Solicitors incur costs on the express authority of their clients; these costs can include the solicitors' fees themselves and also disbursements for costs such as court fees and expert opinions. If successful, clients may be able to recover some or all of these costs from the losing party, but if they lose or the losing party cannot pay, they are ultimately liable for their own solicitor's costs. At the end of a case, the court will decide, taking into account all the circumstances of the case, who should pay the costs. Although, in general, the loser is ordered to pay the winner's costs, there are many exceptions to this principle.

#### 2 What exactly is legal aid?

The different levels of help in civil matters are:

- Legal Help which covers initial advice and assistance with any legal problem.
- Help at Court which includes assistance at court where full representation is not required.
- family mediation where an independent, professionally trained mediator helps you to work out an agreement about issues such as:
  - o Arrangements for children after you break up (sometimes called custody, residence or contact)
  - o Child maintenance payments
  - o Finances (for example, what to do with your house, savings, pension, debts); and,
- representation in a court or tribunal.

Legal Representation covers legal representation for a party to proceedings or a person thinking of taking proceedings. It is the level at which urgent family cases and other cases which can be publicly funded are most likely to be dealt with. It is available in two forms: Investigative Help and Full Representation.

#### 3 Do I have a right to legal aid?

Funding from the Legal Aid Agency (LAA) is only available to individuals with a legal problem that is in scope for legal aid. There are no nationality or residence tests.

Applicants generally also need to:

- Have a low income, or be on certain benefits, and have little savings or property (the 'Means test'), and
- Show that it is reasonable, in the circumstances of the case, for them to be provided with legal aid (the 'Merits' test).

#### Means test

When considering eligibility for legal aid the LAA will consider an individual's financial circumstances. For both legal help and legal representation, the means test includes an assessment of their gross monthly income, monthly disposable income, and disposable capital.

If they receive certain income related social security benefits known as passporting benefits they will automatically pass the income test but capital will still need to be assessed.

Passporting benefits include:

- Income Support (IS)
- income-based Jobseeker's Allowance (JSA)
- Universal Credit (UC)
- Guarantee Credit element of Pension Credit (GC)
- income-related Employment and Support Allowance (ESA)

If individuals receive financial support under sections 4 or 95 of the Immigration and Asylum Act 1999 from the National Asylum Support Service (NASS), you will be passported through both income and capital tests for controlled work immigration and asylum matters and upper tribunal appeals only.

The means test does not apply in some types of case, including:

- mental health tribunal appeals
- where children are being taken into care
- international child abduction cases

#### Merits test

Applications for legal aid are also subject to a merits test, to assess whether it is reasonable, in the circumstances of the case, for someone to be awarded legal aid.

The Director of Legal Aid Casework (DLAC) will consider things such as:

- Whether the likely outcome is proportionate to the cost of bringing the case
- Whether the case has wider public interest,
- If a privately paying client of moderate means would be prepared to spend his or her own money on taking the case, and
- if there would be a breach of an individual's rights if they were not awarded legal aid.

#### **4 Is legal aid granted for all types of proceedings?**

The areas of law for which Legal Aid is available are set out in Part 1 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. They include

- Public family law regarding the protection of children.
- Private family law where there is evidence of domestic violence or child abuse, child abduction cases, forced marriage protection cases and cases where a child is a party to the proceedings.
- Debt where the person's home is at risk. This includes mortgage possession of the home, orders for sale of the home and involuntary bankruptcy where the person's estate includes their home.
- Housing where the person's home is at risk or the person is homeless. This includes possession of the home, eviction, disrepair in rented accommodation where the disrepair poses a serious risk to health or safety, homelessness assistance and anti-social behaviour cases.
- Community care
- Actions against public authorities
- Mental health and mental capacity
- Judicial review
- Special educational needs
- Asylum claims and appeals
- Immigration detention
- Discrimination
- Clinical negligence where a child suffers a neurological injury resulting in them being severely disabled during pregnancy, child birth or the postnatal period.
- Immigration where there are issues of domestic violence, proceedings in the Special Immigration Appeals Commission or issues of human trafficking or slavery, servitude or forced labour.
- Welfare benefits, but only for an appeal on a point of law to the Upper Tribunal, Court of Appeal or Supreme Court.

For other areas, legal aid may be available if the "Exceptional Case Funding" test is met, as set out in section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

#### **5 Are there special procedures in cases of need?**

Emergency help is available for urgent representation in court, for example to keep individuals and/ or their children safe from domestic abuse.

For private family law cases involving domestic abuse you will generally need to provide evidence to show that you or your children were at risk of harm from an ex-partner.

You can ask for evidence from:

- the courts
- the police
- a multi-agency risk assessment conference (MARAC)
- social services
- a health professional, for example a doctor, nurse, midwife, psychologist or health visitor
- a refuge manager
- a domestic violence support service
- your bank, for example credit card accounts, loan documents and statements
- your employer, or education or training provider
- the provider of any benefits you've received

Legal advisers with a legal aid contract can apply for emergency legal representation to cover any immediate action. It is still necessary to apply for legal aid in the normal way for any ongoing work.

#### **6 Where can I obtain a legal aid application form?**

All legal advisers, with or without a legal aid contract, have a duty to tell their clients about the possible availability of legal aid and must give them the option of going to a legal aid provider.

Civil legal aid services can be provided by the Civil Legal Advice (CLA) telephone advice service, solicitors and barristers, or not-for-profit organisations with a Legal Aid Agency contract in the relevant area of law. Legal aid advisers can be found by searching online through Find a Solicitor - The Law Society

Clients can also be referred to the CLA telephone advice service for initial determination of scope and financial eligibility.

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

You'll need to give information about the following for both yourself and your partner (if appropriate):

- benefits - including benefits statements
- income, savings and spending - including pay slips and bank statements
- National Insurance numbers

You'll also need copies of evidence relating to your case, eg:

- court documents
- marriage and birth certificates (for family cases)
- relevant letters

#### **8 Where do I submit my application for legal aid?**

Applications are made on an individual's behalf by solicitors with a Legal Aid contract to the Legal Aid Agency. See above for how to find a solicitor.

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

Your solicitor will tell you if your application for legal aid has been accepted and if you need to pay a contribution.

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

Your solicitor will advise you.

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

You will (see above) although you must choose a solicitor who has a contract with the Legal Aid Agency.

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

If funding is granted, it will cover all your solicitor's costs including disbursements such as court fees, although you may be asked to pay a fixed monthly contribution, depending on your means.

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

See above.

### **14 Does legal aid also cover appeals?**

If you lose a case in a scope case which was not funded by the LAA you may still apply for funding to appeal to a higher court. You will need to meet the means and merits tests.

If your case was funded by the LAA you can apply for an amendment to your funding certificate to cover an appeal. At this stage, the LAA will ensure that your case still meets the means and merits criteria.

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

If your income and/or capital increase while your legal representation funding is in force you must immediately notify the LAA and your means may be reassessed. If your income decreases you may apply for your means to be re-assessed and your contribution may be reduced. If you come into money, for example, if you inherit money, sell your house or win the lottery, while your case is being funded by the LAA, you may be asked to pay some, or all of your legal costs out of the money.

If you are granted funding, it may be limited to certain work, such as obtaining a barrister's opinion on your case, and a maximum grant may be specified.

You will need to apply through your solicitor if you need to extend the amount of work covered or the maximum cost of the work your solicitor can do.

The LAA can withdraw funding if it is no longer reasonable for you to receive it, for example if you refuse a reasonable settlement offer or if it becomes clear that your case has lower prospects of success than expected. This is to ensure that public money is not wasted in a situation where a privately paying client would be unlikely to proceed. If the LAA is considering withdrawing your funding, it will first give you a chance to show why it should not do so, and if it does decide to withdraw funding you have a right of appeal to an independent committee of lawyers. If funding is withdrawn, it will cover costs already incurred by your solicitors.

### **Statutory Charge**

You may also be asked to pay back some or all of your costs if your financial situation improves as a result of proceedings. At the end of a case, the LAA is obliged to recover its costs as far as possible. It will take account first of any contributions paid by you and any costs recovered from your opponent. After that, it will recover any remaining deficit from any property or money recovered or preserved in the course of the proceedings. A privately paying client would have to repay any outstanding costs in this way, and it is only fair that a funded client should do the same, if he or she can afford to. However, if the property in question is your home (or money set aside to buy a home) then you can defer payment until the next time you sell it, provided you agree to pay interest over the intervening period.

### **16 Can I contest a refusal to give legal aid?**

A solicitor/advisor with a legal aid contract can refuse to act for you. Their contract sets out the circumstances when they can refuse e.g. there is a conflict of interest or they don't have capacity. They should tell you why they are not taking on the case but there is no appeal against the decision.

If your application is refused on merits grounds, the LAA will inform you of its decision and provide an explanation. You will then have fourteen days in which to appeal. The appeal will first be reviewed internally. If, after considering the appeal, the LAA considers the criteria for legal aid are met and overturns the decision the application / amendment will be granted and a legal aid certificate / amended certificate issued.

If, the LAA considers the criteria for legal aid are not met and upholds the decision, you and your solicitor will be informed of the reason why and at the same time you will be informed whether there is a right of further appeal to an Independent Funding Adjudicator (IFA).

If the appeal is referred to an IFA they will make a decision / recommendation based on the information provided in support of the appeal and the existing legal aid regulations. The IFA may contact you, if appropriate.

### **Further information**

Further information about Legal Aid is available at [Gov.UK](http://Gov.UK).

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## **Legal aid - Scotland**

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

The costs will depend upon the nature of the case. Costs can include the fees of the solicitor who is acting for the person in receipt of legal aid (the assisted person), together with outlays such as court fees and expert opinions.

At the end of a case, the court will decide which party should pay the costs. In general, the successful party is ordered to pay the unsuccessful party's costs although there are many exceptions to this principle. If the assisted person is unsuccessful or if the other party is ordered to pay the costs but fails to do so the assisted person will be liable to pay his own costs.

### **2 What exactly is legal aid?**

Publicly funded legal assistance (legal aid) allows people to pursue or defend their rights or pay for their defence when they could not otherwise afford to do so. Legal aid in Scotland is administered by the Scottish Legal Aid Board (SLAB), which is a Non-Departmental Public Body funded by The Scottish Government.

There are three types of legal assistance.

**Civil advice and assistance:** Oral or written advice on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking advice. It is provided by a solicitor and, where appropriate, by counsel.

**Advice by way of representation (ABWOR):** A category of advice and assistance that allows for representation by a solicitor or, where appropriate, by counsel in civil proceedings in designated courts and tribunals in Scotland.

**Civil legal aid:** A separate scheme that allows for representation by a solicitor or, where appropriate, by counsel in civil proceedings in other designated courts and tribunals in Scotland.

### **3 Do I have a right to legal aid?**

The eligibility criteria for those accessing civil legal aid are consistent and transparent with applications being subject to statutory tests. The first two tests are applied to the legal content of the application. It must be shown that there is legal basis for the case for which legal aid is sought (called probable cause) and that it is reasonable to use public funds to support the case. The third test is applied to an applicant's financial circumstances.

Advice and assistance can be granted by a solicitor if he is satisfied that the applicant is financially eligible and the subject on which he seeks advice is a matter of Scots law. A solicitor can provide advice and assistance up to a certain level of expenditure. Any work which will exceed the initial level of expenditure must have SLAB's prior approval, as must any work requiring representation.

There is no requirement to be resident in Scotland when applying for legal assistance under the Legal Aid (Scotland) Act 1986. Advice and Assistance is available for matters of Scots Law (including UK law that applies in Scotland). Legal Aid is available for proceedings in the Scottish courts.

#### **4 Is legal aid granted for all types of proceedings?**

See Question 2 above.

Civil advice and assistance is available on matters involving the application of Scots law.

ABWOR is available for civil proceedings in a number of courts and tribunals which are designated in legislation. These include Immigration Appeal Tribunals and Employment Tribunals.

Civil legal aid is available for civil proceedings in a number of other courts and tribunals which are designated in legislation. These include the Sheriff Court and the Court of Session, which are the principal courts in Scotland for civil matters. Legal aid is also available for a number of tribunals such as the Social Security Commissioners and Employment Appeal Tribunals.

Civil legal aid cannot be granted for proceedings wholly or partly concerned with defamation; election petitions; simplified divorce applications in the Court of Session or Sheriff Court; and petitions by a debtor for the sequestration of his estate. It cannot be made available for cases in the small claims court (i.e. where the value of a claim is less than £3000 unless the claim involves personal injury).

However, your solicitor may be able to advise you on these under advice and assistance.

#### **5 Are there special procedures in cases of need?**

A solicitor may undertake certain steps in proceedings as a matter of special urgency in order to protect an applicant's position before an application for civil legal aid is determined by SLAB.

#### **6 Where can I obtain a legal aid application form?**

SLAB will only accept applications which are submitted by a solicitor acting on behalf of an applicant.

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

Your solicitor will advise you about the documents which are required in relation to assessment of financial eligibility and the merits of your case.

#### **8 Where do I submit my application for legal aid?**

SLAB will only accept applications which are submitted by a solicitor acting on behalf of an applicant, not from applicants direct.

If you are unable to find a solicitor to represent you, the Law Society of Scotland provides a solicitor locator on [their website](#). This provides the option to search for a solicitor registered to provide legal aid. You can also call the Law Society on 0131 226 7411.

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

Your solicitor will tell you if you are eligible to receive legally aided advice and assistance.

For legal aid, your solicitor will apply for this on your behalf and SLAB will write to you both once your application for civil legal aid has been assessed. SLAB also have a number of [eligibility estimators](#) on their website to help you gain an understanding of what you may be entitled to.

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

Your solicitor will advise you on the appropriate course of action.

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

You will have to consult a solicitor before you can apply for advice and assistance or legal aid.

If you are unable to find a solicitor to represent you, the Law Society of Scotland provides a [solicitor locator](#) on their website. This provides the option to search for a solicitor registered to provide legal aid. You can also call the Law Society on 0131 226 7411.

Alternatively, [SLAB](#) provides information on the nearest solicitors who offer help through legal aid, or other advice providers funded by the Board. For civil matters, it is possible to search by case type. Although a firm is registered for legal aid work, they are not obligated to offer services to any client or offer to take on a case on legal aid.

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

See question 1 above.

Legal aid covers only the costs of your own solicitor and other expenses related to your case such as court fees and expert opinions. Legal aid does not cover the other party's costs.

If you are eligible for legal aid, you may be required to pay a contribution towards the costs of the case. The level of contribution payable will be based on your financial circumstances.

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

If you are entitled to a limited award of legal aid, you will have to pay towards the rest of the costs of the case yourself. If you have to pay a contribution, the amount will depend on your disposable income, savings and property. SLAB measure income from the date of application and capital (savings and items of value that you own) for as long as your case lasts.

#### **14 Does legal aid also cover appeals?**

The original legal aid certificate will not cover an appeal against the outcome of the case. A fresh application for legal aid is required and SLAB must be satisfied that the statutory tests are met in relation to the appeal.

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

SLAB can, and do occasionally, suspend legal aid for various reasons, such as when a solicitor doesn't respond to a request for additional information. In line with the eligibility criteria set down in law, SLAB are required to take into account continuing assessment of a person's finances and to consider whether it continues to be reasonable to grant legal aid. One part of the reasonableness test is that a legally aided person is expected to comply with court orders.

Legal aid can also be terminated if the assisted person has provided false information or has failed to disclose material information and in those circumstances SLAB may also seek to recover any money it has paid out.

#### **16 Can I contest a refusal to give legal aid?**

If someone has been refused legal aid, SLAB will have given the reason(s) for the refusal. An individual can request a review of the case, particularly if circumstances have changed. An individual case can be discussed with SLAB via e-mail ([general@slab.org.uk](mailto:general@slab.org.uk)) or by telephone. The switchboard (0131 226 7061) is open, Monday to Friday, 0830-1700.

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