

## Domovská stránka&gt;Podanie na súd&gt;Právna pomoc

## Právna pomoc

Právo na právnu pomoc umožňuje osobám, ktoré nemajú dostatok finančných prostriedkov, uhradiť trovy súdneho konania alebo náklady na právne zastúpenie. Systémy právnej pomoci existujú vo všetkých členských štátoch Európskej únie (EÚ) v občianskoprávných aj trestnoprávných konaniach.

Predstavte si situáciu, keď sa dostanete do sporu s niekým vo vašej krajine alebo zahraničí a chcete predložiť vec súdu, alebo situáciu, keď sa od vyžaduje, aby ste sa obhájili, keď druhá strana iniciatívne predloží vec proti vám. Predstavte si situáciu, keď ste obvinení z trestných činov vo vašej krajine alebo v zahraničí a nemôžete si dovoliť právne poradenstvo a/alebo zastúpenie pred trestným súdom. Vo všetkých týchto prípadoch môžete požiadať o právnu pomoc.

Právo na právnu pomoc je zakotvené v:

[Európskom dohovore o ochrane ľudských práv \(EDLP\)](#) – článok 6 ods. 3 písm. c) EDLP zaručuje právo na právnu pomoc, ak odporca nemá dostatok prostriedkov na zaplatenie právnej pomoci a na získanie bezplatnej právnej pomoci, ak je to v záujme spravodlivosti.

[Charte základných práv Európskej únie](#) – v článku 47 charty je stanovené, že právna pomoc sa poskytuje osobám, ktoré nemajú dostatočné prostriedky v prípade, ak je táto pomoc potrebná na zabezpečenie efektívneho prístupu k spravodlivosti.

## Právna pomoc v občianskoprávných konaniach

## Vnútroštátne spory

Systém právnej pomoci existuje vo všetkých členských štátoch EÚ. Ak ste sa dostali do sporu s podnikom, odborníkom, zamestnávateľom alebo inou osobou v **krajine vášho bydliska** a nemáte dostatok finančných prostriedkov na trovy súdneho konania, môžete podľa existujúcich vnútroštátnych predpisov požiadať o právnu pomoc.

Z porovnania vnútroštátnych systémov právnej pomoci však vyplýva, že v členských štátoch existujú základné rozdiely vo filozofii, organizácii a riadení systémov právnej pomoci. Pokiaľ ide o filozofiu systémov, všeobecným cieľom v niektorých štátoch je podľa všetkého umožniť všeobecnú dostupnosť právnych služieb a prístup k spravodlivosti, zatiaľ čo v iných štátoch sa právna pomoc môže poskytnúť len tým najchudobnejším.

**Podrobnejšie informácie na vnútroštátnej úrovni sa zobrazia, ak si zvolíte príslušný štátnu vlajku.**

## ARCHIVOVANÁ webová stránka EJS (pre občianske a obchodné veci)

## Cezhraničné spory

Ak ste sa dostali do sporu s podnikom, odborníkom, zamestnávateľom alebo inou osobou v **zahraničí** a nemáte dostatok finančných prostriedkov na začatie súdneho konania, môžete požiadať o právnu pomoc na cezhraničné spory.

Na umožnenie prístupu k právnej pomoci v občianskych a obchodných veciach bola prijatá [smernica o právnej pomoci v cezhraničných sporoch](#).

Vzťahuje sa na poradenstvo pred súdnym procesom s cieľom dosiahnuť zmier skôr, ako sa začne súdne konanie, na právnu pomoc pri predkladaní veci súdu a na zastupovanie právnym zástupcom na súde, ako aj na pomoc pri oslobodení a na oslobodenie od nákladov konania.

Aby ste mohli získať právnu pomoc v cezhraničných sporoch, musíte vyplniť príslušný formulár žiadostí o právnu pomoc. V smernici sú ustanovené **dva formuláre**: jeden pre žiadosti o právnu pomoc a jeden pre postúpenie žiadostí o právnu pomoc.

## Právna pomoc v trestnoprávných konaniach

Členské štáty majú svoje vlastné právne predpisy ustanovujúce postupy poskytovania právnej pomoci v trestnoprávných konaniach v rámci ich príslušnosti.

Podrobné informácie v tejto oblasti bude v budúcnosti poskytovať európsky portál elektronickej justície.

Pokiaľ ide o cezhraničné veci, v súčasnosti ich neupravujú žiadne právne predpisy EÚ.

Posledná aktualizácia: 30/05/2023

Tieto stránky spravuje Európska komisia. Informácie na tejto stránke nemusia nevyhnutne vyjadrovať oficiálne stanovisko Európskej komisie. Komisia nenesie žiadnu zodpovednosť ani inak neručí za informácie alebo údaje, ktoré tento dokument obsahuje alebo na ktoré odkazuje. Pokiaľ ide o pravidlá v oblasti autorských práv pre webové stránky EÚ, pozri právne upozornenie.

## Legal aid - Belgium

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

'Expenses' in legal jargon cover several items provided for in Article 1018 of the Judicial Code (*code judiciaire / gerechtelijk wetboek*).

Expenses include:

miscellaneous court and registration fees and stamp duty paid before the Stamp Duty Code (*Code des droits de timbre / Wetboek der zegelrechten*) was repealed;

the cost of judicial documents and related emoluments and salaries;

the cost of providing a copy of a judgment;

the costs of any measures of inquiry, particularly witness and expert fees;

travel and subsistence expenses for judges, registrars and parties required to travel by order of the court, and the costs of documents drawn up solely for the proceedings;

the procedural indemnity referred to in Article 1022;

the fees, emoluments and costs of a mediator appointed pursuant to Article 1734;

the contribution referred to in Article 4(2) of the Act of 19 March 2017 setting up a budget fund for second-line legal aid (*aide juridique de deuxième ligne / juridische tweedelijnsbijstand*).

The procedural indemnity is the flat-rate contribution to the costs and fees of lawyers which the successful party may claim against the unsuccessful party.

Who can apply to have a procedural indemnity granted?

The procedural indemnity, provided for under Article 1022 of the Judicial Code, is a flat-rate contribution towards the successful party's legal costs and fees. If requested by one of the parties, possibly on the basis of an intervention by the court, the latter may, by a specially reasoned decision, either reduce the indemnity or increase it, without this amount being greater than the maximum or less than the minimum prescribed by the King. In its assessment, the court will take account of:

the unsuccessful party's financial capacity, in order to reduce the amount of the indemnity;

the case's complexity;

agreed contractual compensation for the successful party;

the manifestly unreasonable nature of the situation.

## 2 What exactly is legal aid?

Legal aid brings together a number of concepts:

It entitles any person to a free initial legal consultation as part of front-line legal aid (*aide juridique de première ligne / eerstelijnsbijstand*). This consultation will be provided by a qualified lawyer.

It also allows certain categories of persons to receive free assistance from a lawyer in dealing with any kind of legal case (second-line legal aid). These lawyers are voluntary. They provide their clients with the same legal services as when they charge a fee (advice, assistance and representation in ordinary, administrative or mediation proceedings).

Legal aid dispenses those parties, whose income is too low to meet the costs of court or out-of-court proceedings, from paying all or part of their registration, registry and certified copy fees. It also ensures that public and ministerial officials (bailiffs, notaries, etc.) and technical advisers (when conducting judicial appraisals) or mediators do not charge the parties involved any fees for the assistance they provide.

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

In order to obtain second-line legal aid, two conditions must be satisfied:

The claim must not be manifestly inadmissible or manifestly unfounded.

The financial situation must correspond to the [access conditions](#) set out in Articles 508/13/1 to 508/13/4 (as inserted by the Law of 31 July 2020 amending the Judicial Code in order to improve access to second-line legal aid and legal aid by increasing the relevant income ceilings).

### Entirely free legal aid:

Single person: net monthly income of less than EUR 1 426.

Single person with dependants or cohabiting with a spouse or with any other person with whom they form a household: net monthly household income of less than EUR 1 717.

### Partially free legal aid:

Single person: net monthly income of between EUR 1 426 and EUR 1 717.

Single person with dependants or cohabiting with a spouse or with any other person with whom they form a household: net monthly household income of between EUR 1 717 and EUR 2 007.

The beneficiary will be expected to pay no more than EUR 125.

The amounts are effective as of 1 September 2022.

Legal aid is also granted to persons who can prove that they do not have sufficient means of subsistence. The decision of the legal aid office (*Bureau d'Aide Juridique / Bureau voor Juridische Bijstand*) granting the entirely or partially free second-line legal aid constitutes proof of insufficient means of subsistence.

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

Yes.

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

Yes.

In urgent cases, the legal aid office may provisionally dispense the applicant entirely or partially from fees without them having to produce all or part of the supporting documents. The applicant must submit the supporting documents within a time-limit set by the legal aid office of no more than 15 days from the date of the decision. If the documents are not produced, the legal aid terminates automatically.

The legal aid office assesses the urgency.

An application for entirely or partially free second-line legal aid is submitted orally or in writing by the applicant or their lawyer to the legal aid office with territorial jurisdiction.

The application may also be submitted through the competent authorities (the international civil cooperation service of the Federal Public Service for Justice), within the meaning of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

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

The legal aid office in your constituency can be contacted.

- French-speaking offices: <https://avocats.be/fr/bureaux-daide-juridique-baj>.

- Dutch-speaking offices: <https://www.advocaat.be/nl/gratis-rechtsbijstand/tweedelijnsbijstand>

Once contacted, the competent legal aid office will send out the legal aid application form to be filled in.

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

Supporting documents vary according to a person's relevant category. If you live with one or more adults, documents providing proof of those persons' incomes must also be provided.

Additional documents may be requested in order to verify that the eligibility conditions for free legal aid are satisfied.

Caution: some documents are valid for a limited period. They may be no older than 2 months from the date on which your legal aid allocation request is submitted.

### 1) You work and are employed

household composition certificate, valid for 2 months;

latest tax assessment;

latest two salary/pay slips (full working months);

salary/pay slips for the current year with holiday bonuses and allowances;

certificate from the national holiday allowance office (manual worker);

certificate of income for the last 2 months (temporary agency worker).

### 2) You work and are self-employed

household composition certificate, valid for 2 months;

latest tax assessment;

accountant's certificate showing your net average income for the last 3 months;

latest VAT return.

### 3) You are unfit for work

household composition certificate, valid for 2 months;

latest tax assessment;

certificate from the health insurance fund (*mutuelle / ziekenfonds*) indicating the allowances paid during the last 2 months;

annual certificate (incapacity for one year or more);

**4) You are a pensioner**

household composition certificate, valid for 2 months;

latest tax assessment;

certificate from the national pensions office (*Office national des pensions / Rijksdienst voor pensioenen*), valid for 2 months.

**5) You are unemployed**

 [https://bajbruxelles.be/images/documents/demande\\_composition\\_menage.pdf](https://bajbruxelles.be/images/documents/demande_composition_menage.pdf) household composition certificate, valid for 2 months;

latest tax assessment;

certificate of unemployment benefits received over the previous 2 months.

**(6) You are in receipt of CPAS/OCMW (*Centre public d'action sociale / Openbaar Centrum voor Maatschappelijk Welzijn*) income support**

CPAS/OCMW certificate, valid for 2 months, stating the type and amount of support.

**7) You are in receipt of an elderly person's income guarantee (*Garantie de revenus aux personnes âgées – GRAPA / Inkomensgarantie voor ouderen – IGO*)**

certificate from the national pensions office specifying the GRAPA/IGO amount.

**8) You are entitled to a disability allowance**

certificate from the Federal Public Service for Social Security (*SPF Sécurité Sociale / FOD Sociale Zekerheid*) mentioning the allowances for the last 2 months.

**9) You live in rented social housing**

social rent calculation sheet.

**10) You are in a collective debt settlement procedure**

household composition certificate, valid for 2 months;

latest tax assessment;

certificate, valid for 2 months, from the debt mediator mentioning the amount they pay you, the available amount of family allowances if these are included, and the amount of the fixed costs paid.

**11) You are under 18 years of age**

a copy of your identity card or other official document proving that you are a minor.

**(12) You are applying for a residence permit**

any document attesting to illegal residence (annexes, obligation to leave the territory, decision refusing residence, passport, etc.).

**13) You are in custody**

certificate of detention.

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

If you know of a practising lawyer who offers free second-line legal aid, you may contact them directly. If they agree to take on your case, they will ask the legal aid office to appoint them.

If you do not know of any lawyers who offer free legal aid, you can make an appointment at the competent local legal aid office to seek advice from a lawyer.

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

You will be informed of the legal aid office's decision within 15 days of the request. Any rejection decision must set out the reasons for the rejection. The notification must contain the relevant information for lodging the intended appeal.

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

You should contact your lawyer or the lawyer appointed by the legal aid office.

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

The legal aid office appoints a lawyer who is on the list of legal aid volunteers.

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

The legal aid covers bailiffs' or experts' fees, postage and registration costs. As with second-line legal aid, it is not automatic and must be requested from the legal aid office of the court hearing the case (Article 664 et seq. of the Judicial Code).

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

If partially free legal aid is provided, this does not mean that only certain services/costs are covered. It simply means that the beneficiary of partially free legal aid will be expected to pay no more than EUR 125, unlike the beneficiary of entirely free legal aid who need not pay anything. Beneficiaries of entirely or partially free legal aid receive the same services.

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

Yes.

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

Yes.

If the conditions change under which the beneficiary is eligible for either entirely or partially free second-line legal aid, the beneficiary must immediately inform their lawyer, who will notify the legal aid office accordingly.

The legal aid office may also terminate legal aid on a lawyer's reasoned application if the lawyer considers that their involvement does not offer any added value.

Other scenario for withdrawal: where the beneficiary manifestly fails to cooperate in the defence of their interests (such as failing to respond to requests from their lawyer).

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

If the application is rejected, it is possible to bring an action before the labour court by written or oral application (to the court registry). The action must be brought within 1 month of being notified of the legal aid office's decision.

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

If partially free legal aid is provided, this does not mean that only certain services/costs are covered. It simply means that the beneficiary of partially free legal aid will be expected to pay no more than EUR 125, unlike the beneficiary of entirely free legal aid who does not have to pay anything. Beneficiaries of entirely or partially free legal aid receive the same services.

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## **Legal aid - Czechia**

### **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 estate 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. Thus, 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.

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 Act also states which persons or 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 entitlement to legal aid. The entitlement to legal aid exists from the beginning and in all proceedings.

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

- appointment of a representative at the participant's request (Section 30(1) of the CCP);
  - 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);
  - 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, under which anyone who does not meet the conditions for having a lawyer appointed by a court and who cannot secure the provision of legal services by other means the right is entitled to a lawyer appointed by the Czech Bar Association for the purpose of providing 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 minimum of the individual or persons assessed jointly with them under the law governing the subsistence minimum 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, they are 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 a single session of legal advice to an unspecified number of persons placed in detention facilities for third-country nationals under the Act on the residence of foreign nationals in the Czech Republic or in a reception centre under the Act on Asylum, at the initiative of their operator.

Legal services may also be requested under the Act on the Legal Profession.

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

The court may, in response to a petition, exempt a participant in the proceedings (or an intervener) from the court fee in part if the participant's circumstances justify this and if the application is not a frivolous or manifestly futile assertion or defence of a right. The court may, in particular circumstances, exempt a participant in the proceedings from the court fee in full, if there are particularly serious grounds for it.

Both natural and legal persons may be exempted.

A participant in the proceedings must not be prevented from asserting 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 incurred in the presentation of 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 a manifestly futile assertion or defence of a right means, in particular, a situation where it is already clear from the applicant's factual allegations that their case cannot be brought to a successful conclusion. A frivolous assertion or defence of a right means, in particular, a malicious exercise of a right or a clear attempt to delay fulfilling what is clearly a binding obligation on the debtor.

If a participant meets the conditions for exemption from the court fee and if 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 cases such as these, 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 in order 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 may file a petition for exemption from court fees at the same time as the action (motion to commence proceedings) or at any time during the proceedings until the court issues a final decision. If a participant intends to bring an action with the assistance of a representative, the court may appoint a representative even before the proceedings commence.

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

If the court rejects an application for a representative to be appointed, the applicant may ask the Czech Bar Association to appoint a lawyer. In such a case, the applicant is 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 minimum of the individual or persons assessed jointly with them under the law governing the subsistence minimum 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 with legal services by an appointed lawyer, either for free if the applicant's income and property conditions justify it, or for a fee if they are not able to obtain legal services themselves for other reasons. In such a case too, the applicant applies 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 advice, and to criminal and 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, assets and earnings situation for exemption from court fees and appointment of a representative and Declaration of a legal person on assets situation and other relevant facts for exemption from court fees and appointment of a representative) are available on the Czech Ministry of Justice website.

Forms relating to the submission of an application for legal aid provided by the Czech Bar Association are annexed to Czech Ministry of Justice Decree No 120/2018 specifying application forms for the appointment of a lawyer and the form requesting the provision of a single session of 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 submitted with the application are clearly specified in the form in question. Those 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 payment assessment from the tax authority (income from business and other self-employed activities); a final decision on the granting of a benefit or confirmation from the payer of such benefit (income from hardship benefits and social security); or other final tax administration payment assessments (other income).

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

A petition for exemption from court fees may be submitted to the court conducting the proceedings for which exemption is being sought. The court of first instance decides on the petition, even if an exemption is sought for the proceedings after an appeal has been lodged.

An application for a lawyer to be appointed by the Czech Bar Association can be submitted in the following ways:

- (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?**

By law (Section 5 of the CCP), courts have a general duty to inform and thus provide participants with information concerning their procedural rights and obligations. The court is obliged to inform the participant regarding the right to file a petition for exemption from court fees or for a representative to be appointed.

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

See the answer in point 3 of the section entitled: What are the requirements for legal aid to be granted?

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

The court decides on the appointment of a representative in response to the participant's petition. If 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 under an obligation to provide legal services unless they have a legitimate reason for refusing (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 with the authority 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 ensures that lawyers are appointed fairly, not least 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 point 1 of the section entitled: 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 it to appoint a lawyer to provide legal advice. Holders of ZTP (severe health disability) or ZTP/P (severe health disability requiring special care) cards or persons receiving hardship benefits 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 at first instance) or only for certain court fees. The participant is required 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 and also 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 decision is issued. The exemption from court fees applies both to proceedings at first instance and to appeal proceedings (ordinary appeal). However, proceedings concerning extraordinary

remedial measures (review of an appeal, action to reopen proceedings, action for annulment) are not automatically exempted and the participant may file a fresh 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 participant's actual situation did not justify the exemption at the time it was granted, the court will withdraw the exemption. Such a measure has retroactive effect only if the court so decides expressly. The court may withdraw the exemption only until the proceedings are brought to a legally binding conclusion. 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 a frivolous or manifestly futile assertion or defence of a right is not a reason for withdrawing the exemption from court fees.

In the case of legal aid provided by the Czech Bar Association, the latter will revoke the appointment of a lawyer if, during the provision of legal services by that lawyer in the case in question, it is established that the client's income and assets situation did not justify the provision of legal services.

The Association will also revoke the appointment of a lawyer to provide free legal aid if, during the provision of legal services by that lawyer, it becomes apparent in the case in question that the client's income and assets 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 when that situation changes. Even in such a scenario, the lawyer is required 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 that requirement being fulfilled.

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

The decision on a petition for exemption from court fees (or withdrawal of an exemption where appropriate) is taken by the court in the form of an order against which an appeal is allowed unless the order was a first-instance decision taken by an appeal court (in which case it is final).

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

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

If a participant in civil court proceedings requests legal aid in order to exercise a right that is subject to a limitation period and submits such a request at the same time as a motion to commence court proceedings (or during those proceedings), the limitation period is suspended for the duration of the proceedings. If the limitation period starts to run again after the proceedings were brought to a close, it will not end earlier than six months after the date on which it started to run again.

An application for legal aid submitted to the Czech Bar Association does not, in principle, affect the running of the limitation period.

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

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

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

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

To **engage in** legal proceedings, persons in need receive legal aid in accordance with the regulations governing legal aid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legal aid can be revoked only in the following circumstances:

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

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

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

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

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

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

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

Find out more on [https://www.bmj.de/SharedDocs/Publikationen/DE/Beratungs\\_PKH.html](https://www.bmj.de/SharedDocs/Publikationen/DE/Beratungs_PKH.html)

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## Legal aid - Ireland

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

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

### 2 What exactly is legal aid?

Legal aid means representation by a solicitor or barrister in civil proceedings in the District Court, Circuit Court, High Court, Court of Appeal and Supreme Court and in certain instances before the Court of Justice of the European Union. It also applies to appeals to the International Protection Appeals Tribunal. It is also available for certain inquests where a request has been made to the Board by the coroner.

Generally, legal aid is provided by solicitors employed by the Board in its law centres. However, legal aid may also be provided by a solicitor in private practice from a panel of solicitors which has been established by the Board. This is particularly the case for family law matters and international protection cases.

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

#### Financial Eligibility & Contributions

In order to get civil legal aid advice, the Legal Aid Board [Home - LAB \(legalaidboard.ie\)](https://www.legalaidboard.ie) will undertake a means test of your financial circumstances to see if you qualify for their services. To get civil legal aid and advice you will need to have an annual disposable income of less than €18,000 and disposable assets of less than €100,000. In both cases, the Legal Aid Board apply certain allowances when calculating these. The house you live in is not included when calculating your assets.

In most cases you will have to make a payment called a "contribution". The amount of the contribution(s) will depend on your disposable income and assets. When you first see a solicitor you will have to pay an **advice contribution**. The minimum advice contribution is €30. Depending on your income, you might have to pay up to €150.

If the Legal Aid Board agree to represent you in Court, you must pay an **aid contribution**. The minimum aid contribution is €130. Depending on your income and assets you might have to pay more. The amount of the aid contribution includes the advice contribution, so in the case where your contribution is calculated at €130, you would only need to pay a further €100.

You don't have to pay a contribution if:

Tusla is asking the Court to allow it to take your children into State care or to allow its staff to supervise your children in your own home.

You are taking or defending proceedings in the District Court for a barring order, safety order, protection order, or interim barring order

There are a small number of other circumstances where the Legal Aid Board won't charge a contribution. These include cases where they give legal advice to a person who alleges that they have been a victim of rape or sexual assault or represent them at the trial of the person who has been accused of committing the rape or sexual assault.

#### International protection (asylum)

If you're applying for legal aid to help you with a claim for international protection in Ireland, you'll only need to pay a contribution of €10.

#### How is my income assessed?

The first step is for you to complete a statement of means on the application for legal services form. You will be asked to give the following information on the form:

**Income-** this is your total income, for example wages, salary, social welfare payments (though some social welfare payments such as Child Benefit and Carer's Allowance are not included) (No housing support measure, provided by any public body, will be treated as income either), pension and certain personal circumstances and also certain items of expenditure in order to decide what allowances may be offset against your income for the purpose of calculating your disposable income.

The allowances are as follow:

Allowance	Maximum Amount
Spouse/Partner	€3,500
Adult and Child Dependents	€1,600 per dependent
Accommodation Costs	€8,000
Child Care	€6,000 per child
Income Tax	Full Amount
PRSI	Full Amount
Universal social charge	Full Amount
Ex-gratia payments received	Deduction of €20 for each payment received each week.

The Legal Aid Board will calculate your disposable income and advise you of the contribution that you must pay. You may complete the statement of means form on your own, or staff in the law centre will help you to complete the form if you are unable to do so. <https://www.legalaidboard.ie> has an on-line indicator which will assist you in finding out if you are likely to be financially eligible. The indicator does not guarantee financial eligibility for legal services. It only acts as a guide.

#### How do I confirm my main source of income and allowances?

You may be required to provide confirmation of your main source of income by providing, for example:

A copy of your latest payslip

A copy of your social welfare slip

A rent book/mortgage statement

The Legal Aid Board can request the Department of Employment Affairs and Social Protection to investigate the means of any person applying for, or in receipt of, legal services. In some circumstances, the Legal Aid Board might ask you to provide further documentation in relation to the allowances you have claimed.

#### How are my capital resources calculated?

The value of your **home** is **excluded** for the assessment of your capital resources. If your capital resources are more than €4000 you must complete the statement of capital on the application form. The following information is required:

**Capital** - Your total capital of every nature, whether in the form of property, car, cash in hand, in the bank, investments or other resources and

**Debt** - You may be given an allowance for certain debts that may be offset against capital for the purposes of arriving at disposable capital, for example, credit union loans.

#### **What happens if I am awarded costs?**

If you awarded costs of your case then these must be paid into the Legal Aid Fund and used to pay the costs The Legal Aid Board spent providing you with legal services. This does not usually happen on family law cases. In non-family law cases if you win your case you will usually be awarded your costs. If on the other hand you lose your case, the other party's costs might be awarded against you. If this happens, the LAB are not liable to pay the other party's costs and you are personally responsible.

#### **What happens if I gain or keep money or other property as a result of my case?**

If you gain or keep money or real property as a result of your case, The Legal Aid Board are allowed - with some exceptions - to use that money or real property to pay for you legal aid. You must pay into their Legal Aid Fund any money you gain or keep as a result of your case that is not exempt. They will deduct their cost and give you back what is left. If it is real property (for example a house or land) that you gain or keep they are entitled to place what is known as a "charge" on that property, so that it cannot be sold until they are repaid.

#### **What should I do if there is a change in my financial circumstances?**

If you are in receipt of legal services you must tell the Legal Aid Board (through your solicitor) of any change in your income or capital, for example, if you have been given a pay rise, the value of your social welfare has changed, or if you have bought a new car or house. The reason you need to do this is because you must stay eligible for legal services while you are receiving legal services, until your case is closed. Just because your financial circumstances have improved does not necessarily mean that they will stop your legal aid, though they might ask you to pay a higher contribution.

#### **What will happen if I fail to notify the law centre of a change in my circumstances?**

If you do not tell the Legal Aid Board that your income or capital has changed, and they discover that it has, the Board might decide to stop your legal aid.

#### **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.

A list of law centres can be found on the [Legal Aid Board website](#).

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).

Additionally, the Legal Aid Board allow for an application to be made online through their website.

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

A payslip/P60, social welfare receipt, or Notice of Assessment from Revenue/Audited Accounts

Details of any other income you receive (e.g. maintenance payments)

Details of your income tax, PRSI, and USC payments (these will be on your payslip or Notice of Assessment).

Details of your monthly mortgage/rent payments

Approximate values of all of your capital assets except the house you live in

Values of any savings you have

Outstanding amounts on any loans/debts that you have

#### **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](#).

The online form is also submitted through the Legal Aid Board 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?

N/A

## 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 - Greece

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

Anyone who wishes to institute or has already instituted legal proceedings must bear the following costs:

- (a) fees for appointing a lawyer to prepare and submit the application for legal aid or other remedies, participate in mediation sessions, attend court hearings as the applicant's attorney/counsel in the relevant proceedings, submit documents, deliver documents for service by a bailiff (*dikastikós epimelitís*), and provide an enforcement order to a bailiff to enforce a judgment;
- (b) costs of service of legal applications or other remedies;
- (c) translation and/or interpretation costs, in cross-border cases;
- (d) costs incurred for experts, where such experts are appointed by order of the court or at the request of the party concerned;
- (e) court fees for submitting documents and instituting enforcement measures;
- (f) costs awarded to the other party.

### 2 What exactly is legal aid?

It is the right of citizens to apply for financial assistance in order to institute legal proceedings or to participate in legal proceedings brought against them. It also covers legal representation at second instance, the costs of a notary (*symvolaioγράφος*) and a bailiff, and enforcement costs.

The content of legal aid in civil and commercial cases is provided for by Law 3226/2004 on the provision of legal aid to low-income citizens and other provisions, as amended (hereinafter 'the Law').

Legal aid may also take the form of appointment of a lawyer to provide legal advice with a view to settling a cross-border dispute before it is brought to court (Article 10(c) of the Law).

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

Article 11 of the Law provides that all citizens of the European Union may be entitled to legal aid. Moreover, third-country nationals and stateless persons who are legally resident or have their habitual residence in the European Union, and who are able to provide evidence that the relevant conditions are met, are eligible for legal aid.

Legal aid is granted provided that the conditions laid down in the Law are met. According to Article 1(2) of the Law, persons with an annual family income not exceeding two thirds of the minimum annual individual income established by the Law are entitled to legal aid. In the event of family disputes, the income of the other party to the dispute (spouse) is not considered to contribute to the applicant's income.

Special rules apply to persons domiciled or habitually residing in another Member State. According to Article 10 of the Law, the threshold referred to above is not mandatory if the applicant demonstrates that the difference in the cost of living between their country of origin and the Hellenic Republic makes it impossible for them to bear the costs of legal protection.

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

Yes, namely for civil, family, commercial and criminal proceedings.

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

The procedure is regulated by Article 2 of the Law. The procedure for granting legal aid begins as soon as the beneficiary submits an application, which contains a summary of the subject matter of the proceedings or of the act, and evidence that the conditions for obtaining the aid are met.

The application must be accompanied by the necessary supporting documents, proof of the applicant's financial situation (in particular a copy of a tax declaration or a certificate from the head of the competent tax office to the effect that the applicant is not required to submit a declaration, a copy of a declaration of assets, a tax clearance certificate, the applicant's tax identification number (*AFM*), social welfare certificates, affidavits), and proof of residence in accordance with paragraph one of Article 1 in the case of a third-country national.

The application and supporting documents shall be submitted at least 15 days before the trial or the act for which legal aid is requested. This time limit may be shortened in the event of a subsequent summons. The procedure is free of charge and it is not necessary to appear with a lawyer.

Article 8(1) provides that applications for legal aid should be submitted to the courts of first instance (*protodikeia*) with territorial and material jurisdiction, which are competent to examine them.

In the case of acts unrelated to court proceedings, the competent court is the district civil court (*eirinodikeio*) of the applicant's place of residence.

The applicant may submit an appeal against the decision of the judge, which will be heard during the interim proceedings (*diadikasia ton asfaltikon metron*). A *prima facie* case is sufficient for the application to be accepted, and full documentation is not required. The court has extensive discretion to collect evidence.

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

All courts in Greece operate a special office to help low-income citizens who are entitled to free legal aid to initiate the procedure. Some courts provide an application form online, e.g. the District Civil Court of Patras (*Eirinodikeio Patras*), see <https://www.eirinodikeio-patras.gov.gr/nomiki-voithia>.

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

Applicants must submit proof of their financial situation. The relevant supporting documents are provided for in the Law (see question 5).

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

The application should be submitted to a court (see question 5).

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

The criteria for obtaining legal aid are set out in the Law. Under Article 1(2), low-income citizens entitled to legal aid are those whose annual family income does not exceed two thirds of the minimum annual personal income defined in the National General Collective Labour Agreement (*Ethniki Geniki Syllogiki Symvasi Ergasias*). In the case of a domestic dispute, the income of the other party to the dispute is disregarded.

Special arrangements apply if the place of residence or habitual residence of the person seeking legal aid in a civil or commercial case is in another Member State. Under Article 10 of the Law, the family income threshold specified is not mandatory, if the applicant can prove that they are unable to cover the legal costs due to the difference in the cost of living between the Member State of their place of residence or habitual residence and Greece.

Due to the cross-border nature of the request, legal aid is also provided to cover interpretation costs, costs for the official translation of documents required to resolve the dispute and the travel costs incurred by the applicant for a person intended to support their request who has to attend the hearing in person, if the court decides that that person may not otherwise participate in the proceedings. Legal aid may also take the form of the appointment of a lawyer to provide legal advice with a view to settling a dispute before it is brought to court.

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

The party must apply to the competent court (see question 5).

Where legal aid is granted by the court, the beneficiary is entitled to the legal services referred to in the answer to question 2.

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

This matter is regulated in Article 5 of the Law. If a lawyer is appointed, they are selected from a list drawn up by the relevant bar association (*dikigorikós syllogos*). Duty counsels (*synígoroi ypiresías*) are designated in alphabetical order from the relevant list of the bar association, and their selection is ratified by the court granting the legal aid. The appointed lawyer may refuse to defend the party. If they refuse, another lawyer is appointed by the same court.

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

Article 9 of the Law, as amended, provides details on the costs covered by legal aid. See also answers to questions 1 and 2.

Legal aid is granted in cases of divorce by mutual consent (*synainetikó diazýgio*) and consists of an exemption from the obligation to pay some or all of the costs of the proceedings before a notary, as well as the fee of the lawyer appointed to represent the applicants before the notary.

Legal aid does not affect the obligation to pay any costs awarded to the other party.

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

This is not provided for in the Law. A possible alternative is having other costs covered by NGOs, primarily in cases of migrants and refugees.

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

Yes. Article 9(3) of the Law provides that legal aid is granted separately for each trial, applies to any courts of any instance and also covers enforcement of the judgment.

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

Under Article 4(2) and (3) of the Law, legal aid may be withdrawn or limited by decision of the competent judge issued on an *ex officio* basis or on a proposal of the public prosecutor (*eisangeléas*), if it is established that the conditions for granting the aid were not met in the first place, are no longer met, or have changed substantially. Applicants who were granted legal aid on the basis of a false application or information shall be required to reimburse the costs from which they were exempted.

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

Under Article 8(2), the applicant may submit an appeal to the multi-member court of first instance (*polymelés protodikeío*) against the decision of the judge of the district civil court, the judge of the single-member court of first instance (*monomelés protodikeío*) or the president of the court of first instance within 5 days of the decision being issued. The appeal will be heard during the interim proceedings (Articles 682 *et seq.* of the Code of Civil Procedure (*Kódikas Politikís Dikonomías*)). No appeal may be submitted before the Supreme Court (*Áreiós Págos*). A new application may be submitted should there be a change of facts (Article 2(5) of the Law).

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

The Law on legal aid does not contain any provision to that effect.

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### **Legal aid - Spain**

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

In Spain, the administration of justice is a public service provided free of charge. There are no fees or charges for using the service. However, litigation normally generates certain costs, which mainly consist of the following:

1. Fees of the lawyer (*abogado*) and the court representative (*procurador*)
2. Costs arising from the publication of notices in official newspapers
3. Deposits required to lodge certain appeals
4. Payments for experts.

Generally speaking, these costs need to be paid in advance by the party concerned. At the end of the proceedings, the court has to decide who should ultimately bear these costs by means of what is known in Spain as an 'order to pay costs' (*condena en costas*), governed by the 'loser pays' principle.

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

Pursuant to Article 119 of the Spanish Constitution, legal aid is a procedure whereby those who can demonstrate a lack of sufficient financial means are granted a series of benefits mainly consisting of exemption from payment of the fees of the lawyer and the court representative, and costs arising from expert testimonies, guarantees, court fees, etc.

More specifically, such payments include:

1. Pre-trial legal advice
2. Fees of the lawyer and court representative
3. Costs arising from the publication of notices in official journals
4. Deposits required to lodge certain appeals
5. Payments for experts.

For cross-border disputes only (after the Legal Aid Act (*Ley de asistencia Jurídica Gratuita*) was reformed by Law 16/2005 of 18 July 2005, bringing it into line with Directive 2002/8/EC), the following items have been included in the above rights:

- a) Interpretation services
- b) Translation of documents
- c) Travel costs where an appearance in person is required
- d) Defence by a lawyer and representation by a court representative even where unnecessary, if the court requires this in order to guarantee equality of the parties.

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

All EU citizens who can demonstrate they have insufficient means (for cross-border disputes this applies to natural persons only).

- a) Third-country nationals who are legally resident in Spain or who have their right recognised in international conventions also benefit from this right (e.g. conventions on international child abduction), under the same conditions as EU citizens
- b) In employment matters, any employed person, regardless of their nationality and financial means
- c) Public-interest associations and foundations.

In criminal, administrative and preliminary administrative proceedings, foreign nationals who can demonstrate they have insufficient means for litigation, even in the event that they are not legally resident in Spain.

Regardless of the existence of means for litigation, the right to legal aid is granted to victims of gender-based offences, terrorism and trafficking in human beings, as well as to minors and persons with mental disabilities when they are victims of abuse or ill-treatment, with the right being extended to their surviving family members in the event of the victim's death, provided that they were not the perpetrators.

Similarly, regardless of the existence of means for litigation, legal aid is granted to persons who can demonstrate permanent consequences, as a result of an accident, which completely prevent them from carrying out their normal employment or occupation and who require assistance from other people, where the subject matter of the dispute is a claim for compensation for the damage suffered.

In the labour courts, for defence in legal proceedings, workers and beneficiaries of the social security system, without any need to demonstrate insufficient resources.

In the case of cross-border disputes, the right can be obtained if the person concerned can demonstrate that the costs of the proceedings cannot be met due to differences in the cost of living between the Member State in which that person is resident and Spain.

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

Legal aid may be granted in all types of proceedings, whether contentious or not, involving sums over EUR 2 000 except where the subject matter requires the assistance of a lawyer, and it covers all procedures, any appeals that may be lodged and the enforcement of judgments.


In proceedings involving sums less than EUR 2 000, where the services of a lawyer and court representative are not required, legal aid may also be applied for where the other party has legal representation or where the judge or court expressly orders to ensure equality between the parties.

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

There is the possibility of provisional appointment, either by the Bar Association (*Colegio de Abogados*), within a maximum of 15 working days from receipt of the application, or on the basis of a court order.

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

From the Legal Advice Service (*Servicio de orientación jurídica*) of Bar Associations, Court Clerk's Offices (*Decanatos de los Juzgados*) and provincial Legal Aid Commissions (*Comisiones provinciales de Asistencia Jurídica Gratuita*).

The General Bar Council (*Consejo General de la Abogacía Española*) provides citizens with a web portal for legal aid  **Justicia Gratuita** where it is possible, among other things, to complete the legal aid application form or check whether the financial conditions required to benefit from legal aid are met, although it is always necessary to submit the documents and application in the manner set out below.

#### **Where to apply**

Applications for legal aid, together with the relevant documentation, must be submitted to the legal advice services of the Bar Association in the place where the court dealing with the main proceedings is located or to the court of the applicant's domicile, in the event that proceedings have not been initiated.

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

Documents relating to:

1. The financial situation of the person concerned and of the members of their family unit
2. Personal and family circumstances
3. The legal protection sought.

More specifically, the following documents:

Confirmation of corporation tax payment (*Certificado de liquidación del Impuesto sobre Sociedades*) (in the case of legal entities).

Photocopy of the public benefit declaration or entry in the Register of Foundations (*Registro de Fundaciones*) (in the case of legal entities).

Confirmation of property ownership (*Certificado de signos externos*) issued by the local authorities of the applicant's domicile.

Confirmation of registration of residence (*Certificado de empadronamiento*).

Confirmation from INEM of period of unemployment and receipt of benefits.

Confirmation of receipt of state pension (*Certificado de cobro de pensiones publicas*).

Certificate from the State Public Employment Service (*Servicio Público de Empleo Estatal – SPEE*) showing receipt of unemployment benefits and the period for which they are granted.

Other (any document used to prove the facts asserted).

However, in order to speed up the application process, the Bar Associations may, if expressly authorised, apply for several of these certificates on behalf of litigants.

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

Applications for legal aid must be submitted to the legal advice services of the Bar Association in the place where the court dealing with the main proceedings is located or to the court of the applicant's domicile, in the event that proceedings have not been initiated. In the latter case, the court must immediately forward the application to the Bar Association with territorial jurisdiction.

These Associations are designated as the receiving authority for applications in cross-border disputes. In such disputes, the authority issuing the application is the Bar Association for the habitual residence or domicile of the applicant.

A European citizen whose State is a party to the European Agreement on the Transmission of Applications for Legal Aid may apply to the central authority designated by their country for the implementation of the Agreement.

The application must be made before initiating the proceedings or, if the party applying for legal aid is the respondent, before contesting the application.

However, both the petitioner and the respondent may subsequently apply for legal aid after proving that their financial circumstances have changed.

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

The Bar Association may adopt the following provisional decisions:

- a) Notify the person concerned that there are shortcomings in the application to be rectified within 10 days, failing which the application will be closed.
- b) Declare that the application is inadmissible and unfounded and notify the Legal Aid Commission accordingly.
- c) Declare that the application meets the legal requirements, in which case it will appoint a lawyer within a maximum of 15 days, notifying the Court Representatives' Association (*Colegio de Procuradores*) in order for the latter to appoint a court representative within 3 days. The Bar Association will forward the application to the Legal Aid Commission for final approval.

If the Bar Association is unable to reach a decision within 15 days, the applicant must send their application directly to the Legal Aid Commission, which must immediately decide to provisionally appoint a lawyer (*abogado*) and court representative (*procurador*) while verifying the information and documents.

The final decision on whether or not to grant legal aid must be adopted by the Legal Aid Commission within a maximum of 30 days of receipt of the file. If, after 30 days, a decision has still not been taken, the provisional decisions adopted by the Bar Association and the Court Representatives' Association will be ratified.

Within three days the decision must be notified to the applicant, the Bar Association, the Court Representatives' Association and the court dealing with the proceedings, or the presiding judge if the proceedings have not been initiated.

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

If you are a claimant, you must submit the application, before initiating the proceedings, to the Bar Association of the place where the court dealing with the main proceedings is situated or to the senior court of the place where the applicant is domiciled.

1. If you are a respondent, you must submit the application before contesting the claim. An application filed by a respondent does not suspend proceedings; however, the court may, of its own motion or at the request of the person concerned, order the suspension of proceedings pending the decision awarding or refusing legal aid.

In the case of cross-border disputes in which legal aid is sought in order to go to court in another Member State, the application may also be submitted to the Bar Association (in the case of residents in Spain affected by a dispute in another State) of the applicant's habitual place of residence or domicile.

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

The general rule is that the lawyer is appointed by the Bar Association on the basis of a rota. However, it is possible for the person concerned to appoint their own lawyer, provided that the lawyer waives the right to receive any payment for their services.

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

It covers the following costs:

1. Pre-trial legal advice
2. Fees of the lawyer and court representative
3. Costs arising from the publication of notices in official journals
4. Deposits required to lodge certain appeals
5. Payments for experts.
6. An 80% reduction in fees for notarial deeds and certificates from property and commercial registers

Furthermore, in the case of cross-border disputes, interpretation and document translation services and travel are included where personal attendance is deemed necessary by the court hearing the case.

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

Where income is more than twice but no more than five times the national minimum wage, the Legal Aid Commission may exceptionally grant legal aid on the basis of the applicant's personal and family circumstances.

Account is taken of the applicant's family circumstances, number of children or dependent family members, court fees and other costs arising from the initiation of proceedings, or other costs of a similar nature, objectively assessed and, in any event, where the applicant holds the status of relative in the ascending line of a special-category large family.

Under the same conditions as those set out in the previous paragraph, legal aid may be granted on the basis of the applicant's health situation and to persons with disabilities referred to in Article 1(2) of Law 51/2003 of 2 December 2003 on equal opportunities, non-discrimination and universal accessibility for persons with disabilities, as well as to persons on whom they are dependent when such persons are acting in proceedings on their behalf and in their interest, provided that these proceedings are related to the health or disability situation giving rise to this exceptional recognition.

In such cases, the Legal Aid Commission concerned must expressly determine which benefits referred to in Article 6 apply to the applicant.

The trial costs not covered must be met by the person concerned, pending the court's decision on costs. If the other party is ordered to pay costs, it is from them that the partial beneficiary will recoup any trial costs they may have borne.

In the case of citizens residing in another EU State, the above rule is applied in a prudential manner, taking into account the standard of living in the State of residence, in order to avoid causing damage to the applicant.

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

Once the right to legal aid has been recognised for a dispute, it extends to all procedures and events associated with the dispute, including enforcement if this occurs within two years of the judgment delivered at first instance, as well as to all appeals against judgments in the same dispute, without any need for any further application.

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

The decision granting legal aid may be revoked if it was obtained through an incorrect statement, falsehood or omission on the part of the applicant.

Legal aid may stop being paid if the financial situation of the person to whom it was granted improves within three years.

In either of these scenarios, the general rule applies: the costs will be paid by the party that loses the case.

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

You can appeal against a decision on legal aid by writing to the Legal Aid Commission itself within 10 days of notification of the decision. Your appeal will be decided on by the competent court.

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

In accordance with Article 16 of the Legal Aid Act, that application does not, in principle, suspend the proceedings. However, in order to prevent the right to an action being prescribed or either party being denied the right to a trial due to expiry of the time period, the clerk of the court, of their own motion or at the request of the parties, may order the period to be suspended until there is a decision on whether or not to grant legal aid, or there is a provisional appointment of a lawyer and court representative in cases where legal representation is either mandatory or required in the interests of justice, provided that the application was made within the time periods laid down in the civil procedure legislation.

Where the application is lodged before the commencement of the proceedings and the action is liable to be prejudiced by the end of a limitation or expiry period, any such period shall be interrupted or suspended, respectively, until the provisional appointment of a lawyer and, if mandatory, a legal aid court representative acting on behalf of the applicant; and, if no such appointment can be made, until a definitive administrative decision is issued on whether or not to grant legal aid.

The limitation period will restart when the applicant is notified of the provisional appointment of a lawyer by the Bar Association or, where applicable, when the Legal Aid Commission issues its decision on whether to grant legal aid and, in any event, within two months of the application being made.

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## Legal aid - France

In France, the provision of free legal help is called legal aid (*aide juridictionnelle*).

### 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. costs of proceedings 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 a different party to pay all or part of the costs; in the latter case the judges determine how the costs are to be split.

- 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?

Legal aid is part of the legal and regulatory framework for legal assistance provided for in Law No 91-647 of 10 July 1991 and its implementing decree, Decree No 2020-1717 of 28 December 2020. The aim of this framework is to meet the requirements of national and international law relating to equal access to justice and the right to a fair trial.

Legal assistance covers:

Legal aid: full or partial payment by the State of the costs of going to trial or taking a case to the appeal courts, and of the costs of proceedings concerning the enforcement of decisions and settlements before the commencement of proceedings or divorce by mutual consent settled out of court;

Aid for assistance by a lawyer in non-court criminal proceedings, such as police custody measures, alternatives to prosecution (settlement, mediation, etc.) or assistance for detainees before a prison disciplinary board;

Aid for access to law (information, guidance and free legal consultation, etc.).

Legal aid and aid for assistance by a lawyer in non-court proceedings enable the State to cover lawyers' fees, emoluments payable to public officials (bailiffs, notaries, etc.) and court fees. The aim is to ensure that individuals are not prevented from defending their rights because of a lack of financial resources.

Legal aid may cover all, part or none of the costs. It does not cover any costs covered by a legal expenses insurance policy or other protection scheme.

Where appropriate, the portion of the costs thus covered are deducted from the amounts advanced by the State in respect of legal aid.

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

Legal aid is granted by the legal aid office (*bureau de l'aide juridictionnelle*) attached to the ordinary court (*tribunal judiciaire*) in question, based on several criteria relating to financial resources, nationality, place of residence and admissibility.

It may also be granted automatically in the context of certain proceedings and in specific cases, without the need to complete any additional formalities other than those imposed by the actual proceedings.

#### Financial criteria:

You can obtain legal aid if the relevant authorities determine that you have insufficient resources to allow you to defend your rights in court. To determine if that is the case, different ceilings are taken into consideration:

- Income ceilings;
- Ceilings in respect of movable and financial assets;
- Ceilings in respect of property assets.

It should be noted that the ceilings depend on the composition of the tax household. However, if the two opposing parties in the proceedings for which an application for legal aid is submitted are from the same tax household, their resources are examined separately.

These ceilings have been adjusted each year since 2021 in line with observed changes in consumer prices excluding tobacco. The adjustment is recorded in an annual circular, published in the *Official Journal of the French Republic*.

The legal aid offices therefore examine applications as follows:

- The main indicator used to ensure compliance with the income ceiling is the **reference tax income** (RFR). The reference tax income is the annual sum of the various types of income coming into the tax household, as calculated by the tax authorities. It appears on the cover page of the tax assessment. The ceiling changes depending on the composition of the tax household;
- In the absence of a reference tax income, the indicator used is that of taxable resources;
- The **ceilings in respect of movable and financial assets** (mainly savings) are laid down in a regulation. It should be noted that if the applicant declares assets of zero value (EUR 0), no supporting documents are requested;
- The **ceilings in respect of property assets** exclude assets that could not be sold or pledged without seriously affecting the persons concerned. This is particularly the case for the main residence and for property used for professional purposes.

To find out whether you are eligible for legal aid, you can consult the 'service-public.fr' website. The website offers an online tool to simulate your eligibility for legal aid by entering your sources of income: <https://www.aidejuridictionnelle.justice.fr/simulateur>. It should be noted that it is an indicative tool which cannot predict the decision of the competent authorities and does not under any circumstances replace the procedure for applying for legal aid.

However, legal aid is granted without consideration of the income criteria to the victims of the most serious crimes (victims of attacks with intent to endanger life or cause bodily harm) and their beneficiaries.

In addition, Article 19-1 of the Law of 10 July 1991 guarantees the remuneration of a lawyer assigned or appointed *ex officio* for a limited list of proceedings, and there is no *ex ante* examination of the recipient's eligibility. Eligibility will be verified *ex post*, possibly leading to the recovery of sums covered by the State in the event of ineligibility.

#### **Nationality criterion:**

Legal aid may be granted to French nationals, nationals of an EU Member State (with the exception of Denmark) or foreign nationals habitually and legally resident in France. It may also be granted for a case in a French court to foreigners not resident in France but who are nationals of a State having an international or bilateral agreement with France making its nationals eligible for legal aid.

**More specifically**, habitual and legal residence in France is the general rule. However, foreigners are granted legal aid without having to meet the condition of being resident if they are minors, assisted witnesses, persons under investigation, charged, accused, convicted or claiming damages in criminal proceedings, if they are the subject of a protection order pursuant to Article 515-9 of the Civil Code, if they are the subject of a plea bargain or if they are the subject of proceedings concerning the conditions laid down in the Code for the entry and residence of foreign nationals in France and the right to asylum in France.

#### **Admissibility criterion:**

Legal aid is granted to persons whose legal action does not appear manifestly inadmissible or unfounded. This condition applies by nature only to legal aid and not to assistance by a lawyer in non-court proceedings. Thus, a time-barred action or the application to bring proceedings as a civil party based on facts which do not constitute a criminal offence are regarded as manifestly inadmissible.

This condition is not applicable to defendants in the action, persons with civil liability, assisted witnesses or persons charged, accused or convicted.

Applicants are refused legal aid for appeals if no reasonable grounds of appeal can be established.

#### **Specific situations**

Legal aid is granted without any examination of the eligibility criteria if the applicant has already received legal aid for their case and their opponent has appealed against the decision handed down in the applicant's favour (in this case the legal aid is deemed to be 'maintained').

Similarly, persons who do not meet the eligibility criteria (in terms of resources or nationality) may exceptionally be granted legal aid if their action appears particularly worthy of interest on account of the subject matter of the litigation or the foreseeable cost of the proceedings (Articles 3 and 6 of the Law of 10 July 1991 on legal aid). This is also the case for victims of assault with intent to endanger life or cause bodily harm, in order to allow them to bring civil proceedings, as well as for their dependants.

There are also a number of proceedings for which legal aid is granted automatically. This is the case for:

- Appeals against individual decisions taken pursuant to Book I and Titles I to III of Book II of the Code on Military Invalidity Pensions and Victims of War
- Minors subject to the hearing provided for in Article 388-1 of the Civil Code
- Proceedings before the National Court of Asylum unless the action is manifestly inadmissible
- Persons in custody:

who are subject to disciplinary proceedings in connection with their detention

who are subject to an isolation measure (automatic isolation, extension or lifting of the placement in isolation if it had been requested by the detainee).

before the commission for the enforcement of sentences pursuant to Article 720 of the Code of Criminal Procedure

- Persons detained in a socio-medical detention centre (*centre socio-médico-judiciaire de sûreté*) with regard to decisions taken against him/her to ensure the smooth running of the centre.

#### **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?**

Provisional eligibility for legal aid may be granted in an emergency situation, for example when the proceedings jeopardise the essential living conditions of the person concerned, or in the case of enforcement involving seizure of property or eviction.

Provisional eligibility is decided by a magistrate of the court hearing the case, following an informal application by the person concerned or *ex officio* if the person concerned has submitted an application for legal aid on which a decision has not yet been taken.

It is granted automatically, that is to say without any additional legal formality other than those required by the actual proceedings, where the proceedings concern the issue of a protection order, a mechanism for the protection of victims of domestic violence.

There is also a guaranteed legal aid scheme applicable to 11 proceedings:

- Judicial proceedings for the lifting and control of psychiatric care measures;
- Assistance of a person applying for or challenging the issue of a protection order as provided for in Article 515-9 of the Civil Code;
- Immediate trial;
- Deferred trial;
- Appearance before an examining magistrate;
- Hearing of arguments concerning placement or maintenance in pre-trial detention;
- Assistance of a minor in respect of child protective service proceedings, proceedings before the juvenile magistrate in criminal matters or the juvenile court, voluntary questioning without custody, preliminary questioning or an investigation;
- Assistance of an accused person before the assize court (criminal court of first instance handling the most severe crimes), the departmental criminal court, the juvenile assize court or the juvenile court ruling in criminal matters;
- Proceedings before the magistrate for custody and release (*juge des libertés et de la détention*) relating to the entry and residence of foreign nationals;
- Proceedings before the administrative court concerning the removal of foreign nationals who are subject to a measure restricting their liberty;
- Non-court proceedings as referred to in points 2° to 4° of Article 11-2 of the 1991 Law.

This arrangement allows your lawyer to request payment of their remuneration by the State. The State will advance the costs for you. Your eligibility for legal aid will therefore be examined after the proceedings in question. If it turns out that you are not eligible, you will have to reimburse the costs to the State.

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

The legal aid application form can be downloaded and printed by copying the following link to your browser:

 <https://www.justice.fr/formulaire/demande-aide-juridictionnelle>

It is also possible to make an online application for legal aid directly from the website <https://www.aidejuridictionnelle.justice.fr/> if your application concerns ongoing or future proceedings before a court of law.

Legal aid may be requested before the petition is lodged or during the course of proceedings.

You may also apply for legal aid after the end of proceedings. For example, to enforce the court decision.

You can also obtain a legal aid application form from the ordinary court where you reside or where the case will be heard, as well as from your nearest *Point Justice* or 'Justice Point' (*Maisons de la Justice et du Droit* (Houses of Justice and Law), *Point d'Accès au Droit* (Access to Law Point) or *Relais d'Accès au Droit* (Access to Law Relay)). To locate it, see the following webpage: <http://www.annuaire.justice.gouv.fr/lieux-dacces-aux-droits-10111/>

If you are a French national living abroad, the form may also be obtained from consulates or at the:

**Département de l'entraide, du droit international privé et européen** (DEDIPE – department of mutual assistance, private international and European law)

**Ministère de la Justice, Direction des affaires civiles et du sceau,**

**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 (SADJAV)**

**Ministère de la Justice**

**13 place Vendôme 75042 Paris Cedex 01.**

Finally, if your application falls under an administrative court or an administrative court of appeal, you cannot complete your application for legal aid online but rather you must use the CERFA form (CERFA being the entity responsible for registering and revising official forms for a variety of purposes in France).

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

The application form for legal aid must be accompanied by the necessary supporting documents (tax assessment, proof of family situation or nationality, etc.). You can find the list of documents to be provided on the '[service-public.fr](http://www.service-public.fr)' website and in the Order of 30 December 2020 on the content of the application form for legal aid and the list of supporting documents.

The supporting documents enable you to show that your situation entitles you to legal aid, in particular with regard to:

- your financial resources and those of the people who usually live in your household;
- the subject of your application.

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

You can submit or send 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 ordinary court (formerly the regional court (*tribunal de grande instance*), which processes legal aid applications for cases to be heard in that court or in those within its jurisdiction: ordinary court (*tribunal judiciaire*), 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 highest ordinary court;
- the Council of State (*Conseil d'état*), the highest administrative court;
- the National Court of Asylum (*Cour nationale du droit d'asile*).

You can also apply for legal aid online at the following address: <https://www.aidejuridictionnelle.justice.fr/>

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

A notification of the legal aid office's decision will be sent to your place of residence.

To estimate any potential legal aid rights, an online simulator is available at:

<https://www.justice.fr/simulateurs/aide-juridictionnelle>

This simulation gives you an insight into whether or not you are eligible for legal aid. However, it does not replace a proper examination of your application. It therefore cannot predict the decision that will be taken by the legal aid office.

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

You should contact your lawyer (or legal official, e.g. bailiff, expert, notary, etc.) or the person appointed to 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 come to an arrangement regarding the additional fee you will pay them. That amount must be shown in the agreement you must 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 either the chair of the bar association at the ordinary court (formerly the regional court) or the president of the court hearing the action.

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

Full legal aid covers all court fees, including the remuneration of court officers (lawyers, bailiffs, experts, notaries, etc.), to whom it is paid directly. That payment is calculated according to a scale or rate depending on the type of proceedings.

It is also possible to be granted partial legal aid, which covers between 25% and 55% of the costs of the proceedings in question.

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

If you are granted partial legal aid, you are still liable for the remainder of the non-fixed fee, determined by agreement between you and the lawyer, under the supervision of the chair of the bar association to whom you may refer any dispute.

As with full legal aid, eligibility for partial legal aid exempts the recipient from having to advance or deposit the costs of the proceedings.

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

If you are the party filing the appeal, you must lodge a further application, which will be assessed taking into account the legally established eligibility criteria. In contrast, if it is your opponent who files an appeal, any entitlement to legal aid you have been granted will remain in effect. You must nevertheless expressly submit a further application to the legal aid office of the ordinary court in either your place of residence or in the district in which the court of appeal is sitting. This new request will not lead to a further examination of the supporting documents or of your resources in particular;

If you have already been granted legal aid for previous proceedings and you wish to lodge an appeal, 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 respect of appeals, legal aid may be denied if no reasonable grounds 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 and Articles 65 to 68 of Decree 2020-1717 of 28 December 2020 on legal aid) during or after the proceedings, in the following cases:

where the legal aid was obtained on the basis of false statements or inaccurate documents;

where proceedings are an abuse of process or have been found to be dilatory and manifestly inadmissible;

where, in the course of the proceedings, the value of the recipient's movable or immovable assets increases significantly;

where the final decision procured assets exceeding the ceilings for eligibility for legal aid;

where the external elements of the lifestyle of the recipient of legal aid or aid for assistance by a lawyer appear to be manifestly incompatible with the amount of the annual resources taken into account in order to assess their eligibility.

Decisions withdrawing legal aid entail an obligation for the recipient to repay the amount of the contribution paid by the State. In this case, the authorities of the State will issue a collection order against you, which will indicate how to reimburse the legal costs advanced by the State.

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

If you are refused legal aid, you may appeal against the decision.

You can appeal yourself or through a lawyer.

An appeal may be brought against a decision to refuse legal aid outright or against a decision to grant partial aid, if you have applied for full aid.

The appeal must be lodged within 15 days of  notification of the decision.


You must indicate in the appeal the reasons why you contest the decision taken. Example: an error in the number of people in your household or the amount of your resources.

The appeal must be sent by registered mail with acknowledgement of receipt to the legal aid office that issued the decision.

You must include a copy of the contested decision.


The authority that issued the decision will forward your application to the authority competent for examining the appeal. The authority competent for examining the appeal depends on the court which is responsible for examining the case in relation to which you have applied for legal aid.

Authority competent for examining the appeal depending on the court	
Court	Authority responsible for examining the appeal
Usual procedure	1st President of the court of appeal to which the court dealing with the case belongs or of the court of appeal dealing with the case
National Court of Asylum ( <i>Cour nationale du droit d'asile – CNDA</i> ).	President of the National Court of Asylum
Administrative court	President of the administrative court of appeal to which the court belongs
Administrative court of appeal	President of the administrative court of appeal dealing with the case
Council of State	President of the Legal Section of the Council of State
Court of Cassation	1st President of the Court of Cassation
Court of Conflicts of Jurisdiction	President of the Court of Conflicts of Jurisdiction

Once the appeal has been examined, you will be  notified of the decision by mail.

This second decision is final; you will not be able to challenge it.

#### N.B.:

An appeal lodged by a lawyer with the president of the administrative court of appeal or the president of the Legal Section of the Council of State must be sent using the  **Télérecours** remote appeals service.

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

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

Under Articles 43 and 44 of Decree No 2020-1717 of 28 December 2020, an application for legal aid has an interrupting effect on the period within which the proceedings or appeal for which legal aid is sought may be initiated, provided that the application for legal aid is lodged within the same time limit.

Consequently, this period starts to run again after the legal aid office has given a final decision on the application. The same applies to the limitation period.

There is an exception in respect of the legal aid office of the National Court of Asylum. The application for legal aid has the effect of suspending the one-month period, which starts to run again after notification of the decision granting legal aid eligibility (Article 9-4 of the Law of 10 July 1991).

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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 they incur as a result of their actions. When a party proposes evidence, they are 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 their intervener incurred by the proceedings. The intervener on the side of the party that loses the case must cover the expenses incurred by their actions. Pursuant to the second paragraph of Article 154 of the Civil Procedure Act, if a party is partially successful in their 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 them, when a judgment 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 when 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 bodies governed by public law 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 comprises:

- general legal information
- legal advice
- drafting of submissions to bodies governed by public law, the European Court of Human Rights and international organisations under international agreements and the rules on the functioning of those bodies
- representation in proceedings before bodies governed by public law
- legal aid in an amicable out-of-court settlement.

Primary legal aid is provided by administrative bodies of the counties and the City of Zagreb (hereinafter: administrative bodies), authorised associations and law clinics. In providing primary legal aid, administrative bodies are authorised to offer general legal information and legal advice, and to draft submissions.

Secondary legal aid includes:

- legal advice
- drafting of submissions in proceedings for the protection of workers' rights before the employer
- drafting of submissions in litigation
- 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 the costs of court proceedings
- exemption from court fees.

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

The following persons are entitled to free legal aid:

- Croatian nationals
- children who are not Croatian nationals but find themselves in Croatia unaccompanied by an adult responsible by 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, persons with asylum status and 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 monthly income of the applicant and the members of their household must not exceed the amount of the calculation base (€441.44) per household member, and
- b) the total value of property owned by the applicant and the members of their household must not exceed the amount of 60 times the calculation base (€26 486.40).

Secondary legal aid is approved without a prior assessment of the applicant's economic 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 beneficiary of maintenance payments under the special legislation governing social security rights, or
- d) a beneficiary of a cost-of-living allowance under the Act on the Rights of Veterans of the Croatian War of Independence 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 War Veterans (*Zakon o zaštiti vojnih i civilnih invalida rata*).

Legal aid can also be granted for cross-border disputes. A cross-border dispute is one where the party applying for legal aid is domiciled or resident in an EU Member State other than the Member State where the court is sitting or where the decision is to be enforced.

Legal aid in cross-border disputes is granted in civil and commercial matters, mediation proceedings, out-of-court settlements, the enforcement of public instruments and legal advice in such proceedings. The provisions on legal aid in cross-border disputes do not apply in taxation, customs and other administrative proceedings.

An applicant for legal aid in a cross-border dispute will be granted legal aid if they meet 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 the granting of legal aid laid down by the Free Legal Aid Act if they prove that they are unable to pay the costs of the proceedings owing to the difference in the cost of living between the Member State where they are domiciled or resident and the Republic of Croatia.

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

Primary legal aid can be provided for any legal matter, on condition that:

- the applicant does not have sufficient knowledge or ability to assert their rights
- the applicant has not received legal aid under specific legislation
- the application submitted is not manifestly unfounded, and

- the applicant's material circumstances are such that paying for professional legal assistance could jeopardise their livelihood or that of members of their household.

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

- proceedings concerning rights in rem, except in land-registry proceedings
- proceedings concerning employment relations
- proceedings concerning family relations, except in proceedings regarding divorce by mutual consent if the spouses have no common or adopted underage children or children who have come of age but are under their parental care
- proceedings concerning enforcement and security proceedings regarding forced collection or securing of claims arising from the proceedings in which legal aid may be granted under the provisions of the Free Legal Aid Act
- amicable settlement of a dispute
- by way of exception, in all other administrative and civil judicial proceedings when such need arises from specific life circumstances of the applicants and their household members, 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:

- the proceedings are complex
- the applicant is incapable of representing themselves
- the applicant's material circumstances are such that paying for professional legal assistance could jeopardise their livelihood or that of members of their household, in accordance with the specific conditions laid down in Article 14 of the Free Legal Aid Act
- the litigation is not vexatious
- the applicant has not had their application rejected within 6 months of the submission thereof for intentionally supplying inaccurate information, and
- the applicant has not received legal aid under specific legislation.

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 their 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 administrative body 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 they submitted the application owing to expiry of the deadline, the administrative body 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 administrative body), 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 administrative body. The application form for legal aid can be obtained from the administrative bodies and on the websites of the administrative bodies and the Ministry of Justice and Public Administration (*Ministarstvo pravosuđa i uprave*).

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 application will be rejected.

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

When an application is submitted to the competent administrative body, it must be accompanied by the written consent of the applicant and the members of their 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 defendants 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 administrative body), 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 administrative body in whose territory the applicant is domiciled or resident.

An applicant who is domiciled or resident 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 and Public Administration of the Republic of Croatia (receiving authority).

A party who is domiciled or resident 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 their application to the office responsible for the place where they are domiciled or resident.

#### **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 the adoption of a decision on granting legal aid. The administrative body 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 abovementioned 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, they must inform the court in the submission, or when taking another action in the court proceedings, about their application for exemption from court fees, and must submit the decision exempting them from paying court fees no later than 6 months from the date 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 specifies the lawyer who will provide the legal aid. The beneficiary of legal aid must submit the decision to the lawyer specified in the decision. Exceptionally, the administrative body will appoint a different lawyer for the beneficiary with their 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 lawyer'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, or of a cost-of-living allowance under the Act on the Rights of Veterans of the Croatian War of Independence and their Family Members and the Act on the Protection of Military and Civilian War Veterans, or if the total income of the applicant and the members of their household does not exceed 50% of the monthly amount of the calculation base per household member.

Any increase in the total income of the applicant and the members of their household above 50% of the calculation 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 and Public Administration 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 and Public Administration 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 their 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 administrative body will revoke the legal aid decision fully or partially. Beneficiaries of legal aid must inform the administrative body about any improvement in their financial situation within 8 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 and Public Administration 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 and Public Administration.

### **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 administrative body 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 and Public Administration must decide on an appeal within 8 days from the date of receipt of a valid appeal. Administrative proceedings may be initiated against the decision of the Ministry of Justice and Public Administration.

Further information:

Website of the Ministry of Justice and Public Administration <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, 80/22 and 114/22).

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

In accordance with the Free Legal Aid Act, the lodging of an application for free legal aid does not have the effect of interrupting the limitation period.

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## **Legal aid - Italy**

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

(Legislative sources) - The rules regulating the categories and procedures for costs of legal proceedings, including legal aid, are comprehensively set out in Presidential Decree No 115 of 30 May 2002 (Official Gazette No 139/2002), as last amended by Legislative Decree No 24 of 7 March 2019 (Official Gazette No 72 of 26 March 2019 to extend legal aid to cover wanted persons subject to proceedings for the execution of a European arrest warrant), containing the Consolidated Text on legal costs (**Articles 74 to 145, in particular the common provisions of Articles 74 to 89, Special provisions on legal aid in civil, administrative, auditing and tax proceedings, Articles 119 to 145**).

Law No 794 of 13 June 1942, as amended, governs lawyers' fees for handling civil, commercial, administrative and tax proceedings; fees for individual legal services are paid on the basis of the tariff approved by Ministerial Order No 585 of 1994.

**(Costs of proceedings)** – The costs, understood in the broad sense, of civil and commercial proceedings include both the costs of proceedings and the expenses and fees for legal representation.

The costs of proceedings consist of a standard payment for entry in the case register and other expenditure items that may arise (such as expert opinions and fees for copying documents).

The standard payment referred to in Consolidated Text No 115 of 2002 is payable at every instance of proceedings, including bankruptcy proceedings and non-contentious proceedings, except where specifically exempted by law.

Payment is not required, in particular, in proceedings regarding a person's family and civil status, as set out in Book IV of the Code of Civil Procedure (for example, in cases of legal separation, provisions relating to minors; property relations between spouses; recognition of refugee status), preventive

proceedings (for example seizure to secure debts); land registry proceedings, proceedings to enforce delivery and release, proceedings regarding child maintenance payments, all proceedings concerning children (for example proceedings regarding parental responsibility) and rules on competence and jurisdiction.

The reasons for any exemption must be appropriately declared by the party in the conclusions to the document instituting the proceedings.

The standard payment is not required in the case of civil actions for compensation in connection with criminal proceedings where the application is only that the offender be convicted; if an application is made for compensation, even provisionally, the payment is due if the application is granted. The charge varies between a minimum of **EUR 62** and a **maximum of EUR 930**, depending on the nature and value of the case.

**(Payment obligations)** – Each party must meet the cost of the procedural documents they complete or request and pay for documents necessary for the action if the law or the judge requires them to do so (for example fees for expert opinions). Where the party is eligible for legal aid, the State bears the cost. As regards the standard payment, this must be paid by the party who enters the case, lodges the initial appeal or, in enforcement proceedings, submits an application for assignment or sale.

The value of the case is indicated in the conclusions of the instituting document; a party who amends an application, lodges a counterclaim or intervenes independently and thereby increases the value of the case is required to pay an additional charge.

**(The criterion for awarding costs)** – In accordance with the general principle set out in Article 91 of the Code of Civil Procedure, the judge orders the losing party to reimburse the costs of proceedings incurred by the successful party as part of his/her judgment on the proceedings.

The judge enjoys discretionary powers with regard to costs and may order them to be paid in part or in full, taking account of the overall outcome of the dispute. He/she must take account of the extent to which the claim as a whole is well founded. The decision may be contested.

The losing party must refund the expenses and fees of the winner's counsel, plus any amounts paid for court-appointed experts or expert witnesses as remunerated by the judge. The losing party is also required to cover the other costs involved in conducting proceedings, which are paid to the clerk of the court together with the cost of notifying the judgment.

## 2 What exactly is legal aid?

In the Italian legal system, the institution of 'legal aid' to provide a defence for citizens with insufficient means whose grounds are not manifestly unfounded, as well as foreign nationals lawfully resident in Italy when the situation or fact occurs that gives rise to legal proceedings and stateless persons (Article 119 of Presidential Decree No 115/2002), involves exempting such persons from having to meet certain costs ('*spese prenotate a debito*' or pre-paid court fees) and the State paying other costs.

Where there is an entitlement to legal aid, certain fees are free, whereas others are paid by the State. The former include the standard payment, lump-sum costs for notifications upon official request, certain fees (registry fees, mortgage and land registry fees) and fees for copies.

The State pays the following:

counsel's fees and expenses;

travel costs and expenses incurred by judges, officials and judicial officers for performing their duties outside the court;

travel costs and expenses incurred by witnesses, court officials and expert witnesses, and expenses incurred by the latter when performing their duties are also reimbursed;

the cost of publishing any legal notice regarding the judge's ruling;

the cost of notifications upon official request;

childcare allowances.

The State has the right of reimbursement and, where it does not recover the money from the losing party, it may claim repayment from the party eligible for legal aid in the following cases: 1) if the recipient wins the case or settlement of the dispute and receives at least six times the costs or 2) if the case is withdrawn or terminated. There are special provisions for ensuring reimbursement in the event of the case being struck off the case register or terminated as a consequence of failure by the parties to act or meet legal requirements.

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

In civil proceedings and non-contentious proceedings (for example legal separation, custody of children or rulings regarding parental responsibility), citizens with insufficient means are entitled to legal aid to mount a defence, as long as their grounds are not manifestly unfounded.

Stateless persons and lawfully resident foreign nationals are treated in the same way as citizens, with the proviso that residency in Italy must be lawful as of the date when the situation or fact that gives rise to legal proceedings occurred. Non-profit organisations or associations that are not involved in commercial activities may also qualify; it is thus not just charitable non-profit organisations or non-profit organisations providing education to the poor, which already qualify under Law No 217/90, that are eligible, but also consumer associations and users included in the list in Article 5 of Law No 281/98.

In accordance with Article 76 of Presidential Decree No 115/2002, in order to qualify for legal aid, the applicant must have an annual taxable income, as shown on the most recent tax return, of no more than EUR 11 493.82 (Ministerial Decree of 16 January 2018 in Official Gazette No 49 of 28 February 2018).

The income thresholds are adjusted every two years by order of the Ministry of Justice, in consultation with the Ministry of Economy and Finance (Article 77 of Presidential Decree No 115/2002), to take account of variations in the consumer price index for families of blue- and white-collar workers, identified by ISTAT over the two years prior.

Where the party concerned lives with a spouse, a civil partner or other family members, the total income earned during the same period by each family member, including that of the applicant, is taken as the income.

As regards cohabitants whose income should be added to that of the applicant, the income thresholds for criminal proceedings are raised to EUR 1 032.91 for each family member living with him/her.

It should be noted that the divorce allowance received by the applicant must be included for the purposes of calculating the amount referred to under Article 76, unless this is paid as a lump sum.

Income from illicit activities also has an effect on eligibility to receive legal aid, it being clarified that income audits may not rely on automatic procedures and instead require a review of the specific facts of the individual case, thus excluding any possibility of a nonfinal judgment being attributed significance, insofar as this harms the presumption of innocence. Refusal to grant aid on the basis of a non-final judgment from which the existence of income from illicit activities may be presumed is thus unlawful (Criminal Court of Cassation, Fourth Chamber, judgment of 20 February 2013, No 18591).

Exception: personal income alone shall be taken into consideration when the case concerns personal rights, or in proceedings where the applicant's interests conflict with those of the other members of the household with which he/she lives.

Eligibility for legal aid shall remain valid for all stages or instances of proceedings; in civil and administrative matters, however, in contrast to criminal matters, if the party that is granted aid loses, he/she may not use legal aid to contest the judgment without having reapplied for that aid.

In addition, eligibility for legal aid in civil proceedings does not mean that the State is responsible for the costs that the client is ordered to pay to the other successful party, as the expenses and fees are only those due to the counsel of the party that is granted aid, which the State, by replacing that party, undertakes to pay, in consideration of his/her unstable financial situation and the fact that his/her claims are not manifestly unfounded (see Civil Court of Cassation, judgment No 10053 of 2012).

#### Specific cases

In derogation from the income thresholds established by paragraph 1 of Article 76 of Presidential Decree No 115/2002, the following may, in some cases, qualify for legal aid:

- injured parties of the offences referred to in Articles 572, 583-*bis*, 609-*bis*, 609-*quater*, 609-*octies* and 612-*bis* of the Criminal Code, and, where committed against minors, the offences referred to in Articles 600, 600-*bis*, 600-*ter*, 600-*quinqüies*, 601, 602, 609-*quinqüies* and 609-*undecies* of the Criminal Code, may be eligible for aid, including in derogation from the income thresholds laid down by law (Article 76, paragraph 4-*ter*);
- unaccompanied foreign minors involved in court proceedings in whatsoever capacity have the right to be informed of the option of appointing a trusted legal advisor, including through their appointed guardian or a person with parental responsibility in accordance with Article 3(1) of Law No 184 of 4 May 1983, as amended, and to apply, on the basis of the applicable legislation, for legal aid at any stage or instance of proceedings (Article 76, paragraph 4-*quater*);
- minor or adult children who are not financially self-sufficient and have lost a parent as a result of murder by the parent's spouse, regardless of whether they were legally separated or divorced, by the parent's civil partner, even if the civil partnership has ended, or by a person who has or had an intimate, long-term relationship involving cohabitation with the parent, may be eligible for legal aid, including by derogation from the statutory income thresholds, by applying that eligibility, as an exception, to the associated criminal proceedings and all civil proceedings resulting from the offence, including enforcement proceedings (Article 76, paragraph 4-*quater*);
- victims of acts of terrorism or similar acts or their survivors (Article 10, paragraph 1, Law No 206/204).

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

As stated above, in civil proceedings and non-contentious proceedings (for example legal separation, custody of children or rulings regarding parental responsibility), citizens with insufficient means are entitled to legal aid to mount a defence, as long as their reasons are not manifestly unfounded.

There are subjective grounds for exclusion from the aid in question:

- The applicant is a person convicted by final judgment for offences associated with the violation of rules on the suppression of income tax and VAT evasion;
- the applicant is assisted by more than one counsel, except for a counsel that has been appointed to participate in criminal proceedings remotely in cases where Law No 11/1998 applies.

There are, however, cases other than those above in which it can be assumed that the applicant has sufficient means, namely the following:

in cases involving transfer of the receivables and interests of others (unless the transfer is made in payment of pre-existing receivables or interests);  
in the event of conviction by final judgment for the offences under Articles 416-*bis* of the Criminal Code and Article 291-*quater* of the Consolidated Text referred to in Presidential Decree Nos 43 of 23 January 1973, limited to the aggravated scenarios under Articles 80 and 74(1) of the Consolidated Text referred to in Presidential Decree No 309 of 9 October 1990, and for the offences committed by exploiting the conditions identified by the aforementioned Article 416-*bis* or for the purpose of facilitating the activities of the associations identified by that article, income is considered to be above the thresholds set. Proof to the contrary is permitted, however (Constitutional Court, Judgment No 139 of 2010).

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

There is no specific procedure for emergencies. However, it should be pointed out that, in accordance with Article 126 of the Consolidated Text, the bar council may, within 10 days of the application being submitted or received by the latter and where the requirements are met, provisionally grant the applicant legal aid upfront.

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

In civil proceedings, legal aid applications, drafted using the methods and with the content laid down by Articles 79 and 122 of the Consolidated Text, should be submitted or sent by registered delivery to the bar council, and only by the applicant or the applicant's counsel.

It is not clear whether the registered delivery requires acknowledgement of receipt; therefore, this is not deemed to be a condition of eligibility, but is at the applicant's discretion.

Application forms are available from the offices of the bar council.

Applications for legal aid in civil proceedings must be submitted to the **office of the bar council** that is competent as regards:

- the place where the judge before whom proceedings are pending is based;
- the place where the judge that is competent to rule on the merits of the case is based, if proceedings are still ongoing;
- the place where the judge who issued the contested ruling is based for appeals to the Court of Cassation, the Council of State or the Court of Audit.

The application pursuant to Article 78 of Presidential Decree No 115/2002 is inadmissible unless signed by the applicant. The signature must be authenticated by the counsel or using the procedures established by Article 38(3) of Presidential Decree No 445 of 28 December 2000.

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

The application, signed by the applicant, must be made on plain (unstamped) paper and must indicate the following (Article 79 of the above Presidential Decree):

- the request for legal aid
- the personal details and tax code of the applicant and the members of his/her household
- a statement of the income received the year prior to the application (self-declaration)
- a commitment to notify any significant fluctuations in income for the purposes of eligibility for aid
- if the case is already pending
- the date of the next hearing
- the counterparty's details and place of residence
- factual and legal grounds for assessing the foundation of the claim being asserted
- evidence (documents, contact details, witness statements, expert opinions, etc. to be enclosed in copy).

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

As stated above, legal aid applications for civil proceedings must be submitted to the **office of the bar council** that is competent as regards:

- the place where the judge before whom proceedings are ongoing is based;
- the place where the judge that is competent to rule on the merits of the case is based, if proceedings are still ongoing;
- the place where the judge who issued the contested ruling is based for appeals to the Court of Cassation, the Council of State or the Court of Audit.

As regards criminal proceedings, applications must be submitted to the judge before whom proceedings are pending, it being clarified that, if proceedings are pending before the Court of Cassation, it is the judge who issued the contested ruling that is competent (Articles 93 and 96 of the above Presidential Decree). Applications must be submitted to the clerk of the court at which the proceeding judge is based, by the applicant or the applicant's counsel, or may be sent to the clerk by registered delivery.

If the applicant is detained or imprisoned, applications may be received by the director of the penal facility or by an officer of the judicial police.

It is no longer possible to submit applications during a hearing.

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

A copy of the document by which the bar council grants, rejects or declares the application inadmissible will be sent to the applicant and the judge.

#### **After the application has been submitted, the bar council will:**

**assess** the foundation of the claim being asserted and whether the conditions for eligibility have been met,

**issue** one of the following rulings within 10 days:

acceptance of the application

inadmissibility of the application

rejection of the application

**sends** a copy of the ruling to the applicant, the competent judge and the Revenue Agency, in order to verify the income declared.

If the bar council rejects or declares the application inadmissible, it may be brought to the judge hearing the case, who will then take a decision in the form of an order. The time limit is mandatory.

Following completion of the checks, the judge will issue a reasoned order declaring the application inadmissible, or else its acceptance or rejection.

Once issued, the clerk of the court will notify the applicant of the order.

In criminal proceedings, however, the judge must issue an order within 10 days following the date of submission or receipt of the application.

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

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

Applicants granted legal aid may appoint a counsel from the lists of legal aid counsels drawn up by the bar councils of the Court of Appeal district in which the judge competent to rule on the merits of the case or the judge before whom proceedings are pending is based.

Applicants granted legal aid may also appoint an expert witness, where permitted by law.

If the case is before the Court of Cassation, the counsel will be chosen from the lists drawn up by the bar councils of the Court of Appeal district where the judge who issued the contested ruling is based.

The list of legal aid counsels comprises professionals who have applied to be put on it and have the qualifications necessary to mount a defence.

The bar council makes the decision to include counsels on the list on the basis of their aptitudes, professional experience gained over at least six years and the fact that they have not been subject to disciplinary measures.

Counsels may be struck off the list at any time. It is renewed every year and made available to the public at all judicial offices in the district.

Counsels representing the party that has been granted aid must request notice that proceedings have been discontinued if they are struck from the case list on the grounds of the parties' failure to act (pursuant to Article 309 of the Code of Civil Procedure). Failure to comply with this obligation is a disciplinary matter.

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

Recipients of legal aid (Article 107 of the above Presidential Decree) are exempted from having to pay certain costs, while others are paid by the State, as set out in Article 131 of Presidential Decree No 115/2002. The aid covers all the costs of the proceedings required by law, including the appointment of an expert witness acting for the applicant. It does not, however, cover the cost of out-of-court consultations.

The fees and expenses due to the applicant's counsel are paid by the judge at the end of each stage or instance of proceedings and, in any event, upon termination of the appointment.

Expenses and fees are also paid to the judge's assistant and to any expert witness acting for the applicant.

The recipient and the parties involved, including the public prosecutor, are notified of and may contest the payment order.

The applicant's counsel, the judge's assistant and the expert witness acting for the applicant may not request or receive remuneration or compensation from their client other than that provided for by law. Any agreement to the contrary is null and void and any infringement of this prohibition is a serious disciplinary offence.

In the case of civil action brought in connection with criminal proceedings, the costs of the proceedings are governed by Article 108 of the Consolidated Text. Broadly speaking, however, eligibility for legal aid gives the recipient the same entitlements as those covered by the general rules.

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

The rules on legal aid do not provide for partial aid.

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

Eligibility covers all instances and stages of proceedings and any derived or otherwise connected procedures (such as enforcement).

However, if the party that has been granted aid loses, he/she may not use legal aid to contest the ruling, apart from claims for compensation in connection with criminal proceedings.

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

If there are changes with regard to the recipient's income during proceedings that have an effect on his/her eligibility for legal aid, the proceeding judge will withdraw the aid.

The proceeding judge may also withdraw legal aid at any time if it emerges that the eligibility criteria have not been satisfied or that the party concerned has acted or reacted in bad faith or with gross negligence.

The withdrawal takes effect from the moment when the change in income has been verified, but in other cases it is retroactive and requires the recovery of the sums paid by the State.

If it is discovered that false statements have been made, the finance office requests the withdrawal of aid and forwards the evidence to the Public Prosecutor responsible for instituting any resultant criminal proceedings.

Checks that the eligibility criteria continue to be satisfied may be repeated during proceedings at the request of the judicial authorities or on the initiative of the finance offices.

In the event that false statements regarding income have been made, this carries a sentence of between one and five years' imprisonment and a fine of between EUR 309.87 and EUR 1 549.37. The sentence or fine is increased if the false statement resulted in the applicant obtaining or continuing to obtain legal aid.

Conviction results in retroactive withdrawal of aid and recovery of the sums paid by the State from the offender (cf. Article 136 of the above Presidential Decree).

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

If the competent bar council rejects the legal aid application or declares it inadmissible, the applicant may reapply to the judge hearing the case, who will then take a decision in the form of an order.

In criminal proceedings, however, Article 99 of the Presidential Decree establishes that the applicant or the applicant's counsel may submit an appeal to the President of the Court or of the Court of Appeal to which the judge who rejected the application belongs within 20 days of notification of the unsuccessful application.

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## **Legal aid - Cyprus**

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

Legal costs will depend on the type and value of the case, as determined by the relevant court rules, and include all costs of the court proceedings. They usually include the costs of the proceedings, the costs of drafting procedural documents and registering interim applications, the costs of hearings and appearances, before and after the hearing, the expenses of witnesses, the costs of drawing up the list of expenses and the costs of correspondence by letter before and during the proceedings. As far as civil and private criminal cases are concerned, the court will decide, at the end of each case, which party will bear the costs of the court proceedings, taking into account the specificities/circumstances of each case.

As regards civil and private criminal cases, the general rule is that the party who is unsuccessful in the court proceedings is liable for payment of all costs.

This means that the party who is successful in the court proceedings is usually entitled to recover reasonable costs and the expenses incurred in the course of the court proceedings. However, it is important to note that the court also has the authority to make exceptions and derogate from the general rule concerning costs. The court may, given certain specificities/circumstances, decide that each party bears their own costs.

As regards criminal cases, the court determines the costs of the court proceedings on the basis of the complexity of the case.

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

Legal aid is a support system that provides public funding for legal representation and access to the judicial system for those who cannot afford the cost of legal services.

In Cyprus, legal aid covers various legal services, including legal advice and assistance with the drafting of legal documents and legal representation before a court.

Legal representation includes any form of assistance normally provided by a lawyer in connection with proceedings, at all stages, up to the issuing of a decision, and with appeal proceedings; in the case of criminal proceedings it also includes any stage related to the proceedings prior to their commencement.

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

There are two main requirements that the court examines before granting free legal aid:

**(a) Economic criteria:** The applicant must prove that they cannot afford to pay for legal representation and therefore do not have sufficient means to pay for legal services.

The specific economic criteria may vary, depending on the socio-economic report by the Department of Social Welfare Services (*Tmima Ypiresión Koinonikís Evimerías*), taking into account the income of the applicant, the actual and expected earnings, any other income from work or other sources, the cost of meeting the basic needs of the applicant and their family and their other obligations and needs.

**(b) Seriousness of the case:** The seriousness of the case may be taken into account in the interests of justice.

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

Legal aid is granted in proceedings before the Cypriot courts, specifically:

(a) criminal proceedings, from the investigation stage until the trial before the District Court (*Eparchiakó Dikastírio*), Assize Court (*Kakourgiodikeio*) and Military Court (*Stratiotikó Dikastírio*);

(b) proceedings relating to a European arrest warrant;

(c) civil and criminal proceedings for specific human rights violations (according to the law, human rights violations are violations of the rights provided for in Part II of the Constitution of the Republic of Cyprus, the European Convention for the Protection of Human Rights (Ratification) Act of 1962, the Convention on the Elimination of All Forms of Racial Discrimination (Ratification) Act of 1967, the International Agreements (Financial, Social and Cultural Rights and Civil and Political Rights) (Ratification) Act of 1969, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Ratification) Act of 1989, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ratification) Act of 1990, the United Nations Convention on the Elimination of All Forms of Discrimination against Women (Ratification) Act of 1985 and the Convention on the Rights of the Child (Ratification) Act of 1990);

(d) proceedings before a Family Court (*Oikogeneiakó Dikastírio*) concerning family matters, parental responsibility, maintenance, recognition of a child, adoption, matrimonial property and any other dispute concerning marriage or family;

(e) cross-border disputes;

(f) administrative appeals by applicants, beneficiaries of international protection and illegally staying third-country nationals, before the Administrative Court (*Dioikitikó Dikastírio*), pursuant to Article 146 of the Constitution;

(g) victims of human trafficking including child victims of solicitation for sexual purposes, child pornography, sexual exploitation and/or sexual abuse, in civil proceedings in actions for damages (based on European Directives);

(h) a mortgage debtor or any interested person, in proceedings before any court in Cyprus concerning the sale of mortgaged immovable property;

(i) appeal proceedings before the Administrative Court, pursuant to Article 146 of the Constitution, on the rights of citizens of the Union and their family members (based on a European Directive).

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

If the case is urgent, the lawyer may ask the court hearing the case to issue a certificate for free legal aid. In such cases, the court gives the necessary priority to dealing with the application.

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

A special form is available from the registry of the court that has jurisdiction to deal with the application for legal aid. The form is then completed by the applicant or their lawyer, submitted to the court hearing the case and entered in the Special Register of the same registry.

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

To support your application for legal aid, you must submit all the necessary documents, such as identification documents, documents relating to your financial situation (and that of the persons living permanently with you), court documents (if any) and any other evidence as indicated below:

**identification documents:** for example, a copy of a valid passport and/or a copy of a valid identity card;

**updated documents concerning your financial situation:** documents relating to your financial situation, proving your inability to seek legal representation, such as bank statements, payment slips or tax returns, unemployment certificate, certificate proving any benefits granted by the State, proof of any other source of income or assets;

**court documents:** if you have already initiated legal proceedings or you have court documents related to your case, you are advised to include copies of these documents;

**supporting evidence:** any additional evidence related to your case, such as medical reports, correspondence or other relevant documents.

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

The application is submitted to the court where your case is being heard.

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

From any registrar of the courts in Cyprus, and from the Cyprus Bar Association (*Pagkýprios Dikigorikós Sýllogos*).

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

You will have to contact in writing the court where your case is being heard or will be heard and apply for a certificate for free legal aid.

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

The lawyer is chosen by the beneficiary of free legal aid from among lawyers who are willing to offer their services. If the beneficiary does not indicate a lawyer of their choice, the court issuing the certificate for free legal aid invites the beneficiary to choose a lawyer from a list, drawn up by the Cyprus Bar Association, of lawyers interested in offering legal aid services.

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

If a certificate for free legal aid is issued by the court, all your costs are covered.

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

There is no provision in Cypriot legislation that grants only some legal aid. See the reply under 12 above.

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

Legal aid may be granted at each instance (first or second instance). In other words, if you have obtained legal aid in the proceedings at first instance, you are entitled to claim legal aid also at second instance in relation to your case.

A new certificate is not required for an appeal and the court takes into account the socio-economic report from the Department of Social Welfare Services drawn up for the purposes of the proceedings at first instance, provided that the applicant declares on oath that their financial situation has not changed.

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

The certificate for legal aid may be withdrawn by the court where there is a substantial change in your personal and financial information; the certificate may be withdrawn either automatically or at the request of the Attorney-General (*Genikós Eisangeléas*). Withdrawal of a certificate that has been issued does not affect the right of any lawyer to a fee for the services provided up to the date of withdrawal.

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

There is a right of appeal against the decision not to issue the certificate for legal aid, on the basis of the fundamental rule that all court decisions are subject to appeal.

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

The request for legal aid does not have the effect of suspending the limitation period.

The limitation period continues to run independently of the application for legal aid.

However, in certain types of proceedings, such as criminal proceedings, there is generally no limitation period for criminal offences.

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### **Legal aid - Latvia**

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

Pursuant to the Civil Procedure Law (Civilprocesa likums), costs of legal proceedings include the following:

I Court costs and

II Costs related to the proceedings.

Court costs and costs related to the proceedings are established with the aim of :

partially compensating the expenses incurred by the State in funding the work of the courts;

compensating the party in whose favour the court's ruling is made for expenses incurred;

encouraging the voluntary discharge of liabilities by debtors.

Information on where the court costs can be paid can be obtained at the registry office of each court.

An ancillary claim against a decision on the costs of the proceedings can be filed by the person subject to the decision.

I COURT COSTS include:

a State fee (valsts nodeva);

a clerical fee (kancelejas nodeva);

costs related to the examination of the case.

Pursuant to Article 34 of the Law on Civil Procedure, each action brought before a court is subject to a specified State fee, be it an original claim or a counter-claim, an application submitted by a third party in a case already pending with an independent claim relating to the subject-matter of the dispute, an application in a special adjudication procedure, and other applications provided for in this Article. In petitions for divorce, where the petitioner has an under-age dependant, the judge will defer payment of the State fee or allow its payment in instalments at the request of the petitioner.

Pursuant to Article 38 of the Law on Civil Procedure, the clerical fee is payable:

for the issue of a true copy of a document in a case, and for the reissue of a court judgment or decision;

for the issue of a certificate;

for the issue of a duplicate of a written enforcement order;

for certifying the entry into force of a court ruling, where the ruling is to be submitted to a foreign authority;

for summoning witnesses.

Pursuant to Article 39 of the Law on Civil Procedure, expenses related to the proceedings include:

sums payable to witnesses and experts;  
expenses related to the hearing of witnesses or carrying out inspections on site;  
expenses related to searching the respondent;  
expenses related to the enforcement of a judgment;  
expenses related to the service, issue and translation of court summons and other judicial documents;  
the costs of publishing notices in newspapers;  
fees related to the securing of a claim.

Exemption from court costs:

The Law specifies the persons who are exempt from paying court costs (Article 43(1) of the Law on Civil Procedure), including the party granted State-funded legal aid.

In other cases, a party to the case may request the court for full or partial exemption from court costs on the basis of their financial situation and subject to provision of relevant proof.

The court or the judge considers the request and grants full or partial exemption from having to pay court costs to the national budget, taking account of the individual's financial situation.

Payment of court costs:

Accounts for the payment of State fees, clerical fees and adjudication expenses can be found on the portal in the 'State fees and court accounts' section (Valsts nodevas un tiesu konti).

Reimbursement of court costs:

The party in whose favour a judgment is made is awarded the recovery of all of its court costs from the opposite party.

If a claim has been satisfied in part, the recovery of court costs is awarded to the applicant in proportion to the part of the claims satisfied, and to the respondent in proportion to the part of the claims dismissed.

If an applicant withdraws a claim, they have to reimburse the court costs incurred by the respondent. In the event of this, the respondent does not have to reimburse the court costs of the applicant. However, if an applicant withdraws their claims because the respondent has voluntarily satisfied them after they were submitted, the court will, at the request of the applicant, order the respondent to reimburse the court costs paid by the applicant.

If an applicant is exempted from paying court costs, the respondent will be ordered to pay the applicant's court costs to the national budget in proportion to the part of the claim that has been satisfied.

If the claim is dismissed, left without further action, or the applicant withdraws the claim, the applicant will be ordered to pay the court costs that have not been paid in advance to the national budget. However, if the applicant does not pursue their claim because the respondent has voluntarily satisfied it after the claim was filed, the respondent will be ordered to pay the court costs to the national budget.

If the claim has been satisfied in part, but the respondent is exempted from paying court costs, the costs are to be paid by the applicant who is not exempted from paying court costs, in proportion to the amount of claim that has been dismissed.

If both parties are exempted from paying court costs, the costs will be borne by the State.

The court or the judge can defer payment of court costs or allow payment in instalments, taking account of the individual's financial situation.

Reimbursement of a State fee:

Information on the grounds and procedure for the reimbursement of a State fee can be found on the portal in the 'Reimbursement of fees' section (nodevu atmaksa).

**II COSTS RELATED TO THE PROCEEDINGS are:**

lawyer's fees;  
costs related to travelling to court hearings;  
costs related to collecting evidence;  
costs of State-funded legal aid (applicable to proceedings initiated after 1 March 2016).  
costs of an interpreter's assistance at the court hearing.

Reimbursement of costs related to the proceedings:

Costs related to the proceedings shall be reimbursed in the amount laid down in law.

The respondent will be ordered to pay the costs related to the proceedings incurred by the applicant, if the applicant's claim has been satisfied in full or in part, and if the applicant withdraws their claims because the respondent has voluntarily satisfied them after the claim was filed.

If a claim is dismissed, the court will order the applicant to reimburse the respondent's costs related to the proceedings.

If the party responsible for paying the costs of State-funded legal aid is exempted from payment of court costs, the costs related to the provision of State-funded legal aid will be borne by the State.

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

State-funded legal aid is assistance in resolving a legal matter out of court or in court in order to defend infringed or disputed rights of a person or their interests protected by law in cases, by means and in scope provided for in the Law on State-funded legal aid (Valsts nodrošinātās juridiskās palīdzības likums).

State-funded aid covers legal advice, drafting of procedural documents and representation in court.

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

The following persons can receive State-funded legal aid:

a person who has the status of a person on low-income or a person in need - the relevant certificates are issued by local social services;  
a person who unexpectedly finds themselves in such circumstances and financial situation that prevent them from ensuring the protection of their rights (natural disasters, force majeure or other circumstances beyond the person's control) - they must submit relevant information and proof;  
a person who is entirely dependant on the State or the local authority - the relevant information must be submitted by the State or local authority body at the request of the person or the Courts Administration (Tiesu administrācija).

Partially State-funded legal aid, where the person makes a co-payment, and a lawyer's assistance in specific types of civil cases (cases seeking to invalidate a decision of a general meeting of shareholders, cases concerning disputes stemming from contract law where the amount of claim exceeds EUR 150 000, and cases dealing with protection of commercial secrets from illegal acquisition, use and disclosure) can be granted to persons who meet the following criteria:

their income does not exceed the minimum monthly wage in Latvia;  
their financial situation makes them eligible to receive legal aid.

Whistleblowers are eligible for State-funded legal aid irrespective of their financial situation.

The financial situation and level of income of a person who needs legal aid in a cross-border dispute and whose habitual residence or domicile is in one of EU Member States is considered eligible for receiving legal aid for adjudicating the dispute in Latvia if on the day of requesting legal aid their average monthly income over the previous three months did not exceed 50% of the minimum monthly wage in Latvia, subject to other applicable regulatory conditions.

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

State-funded legal aid is granted for resolving justified civil disputes and civil cases in court until the final verdict comes into force, with the exception of e.g.: cases that concern a claim directly related to the person's commercial or business activities, or independent professional activities;

cases that concern customs or tax-related matters;

cases that concern a claim related to violation of honour and dignity;

cases that concern remedy for moral damage, with the exception of cases where provision of legal aid is related to seeking remedy for moral damage caused to the victim as a result of a criminal offence;

disputes that are adjudicated by an arbitration court or by other alternative mechanisms of dispute settlement;

cases that concern a claim related to luxury objects or luxury services;

costs of legal aid that are disproportionately high in comparison to the amount of the claim.

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

The person must submit a completed request for legal aid (an application form) to the Courts Administration with copies of supporting documents relating to the information included in the application (documents that prove eligibility for State-funded legal aid and documents describing the nature of the civil dispute and related proceedings). The documents must be submitted to the Courts Administration in person, by post or email [pasts@ta.gov.lv](mailto:pasts@ta.gov.lv), using an electronic signature with a time stamp.

The Courts Administration will review the application and take a decision to grant legal aid or decline the request within 21 days of receipt of the application or within 14 days of receipt of the application if the case concerns children's rights.

If additional information is requested, the deadline for decision will be postponed until the necessary information has been received or the deadline for its submission has expired.

When taking a decision on granting legal aid, the Courts Administration will appoint a provider of legal aid which has concluded a contract for the provision of legal aid with the Courts Administration.

The decision on the provision of legal aid stipulates the provider of legal aid and the place and time of provision of legal aid.

The applicant will be notified of the decision to grant legal aid or to decline the request in writing, by post or electronic message sent to the address indicated in the application; the applicant can also receive the notification in person from the Courts Administration office.

The decision of the Courts Administration can be appealed before the Ministry of Justice, whereas the decision of the Ministry of Justice can be appealed before an administrative court.

In cases concerning the provision of partial State-funded legal aid (i.e. a lawyer's assistance in specific types of civil proceedings), the Courts Administration will take a decision within a month of the date of receiving the application for legal aid and specify in the decision the scope of legal aid and the deadline by which payment for legal aid must be made. Upon receipt of the payment, an assignment will be drawn up for the provider of legal aid within seven days on the provision of State-funded legal aid. If no payment for the provision of legal aid has been received, the Courts Administration will take a decision to terminate the provision of legal aid.

If a person whose habitual residence or domicile is in an EU Member State requires legal aid in a cross-border dispute and the cross-border dispute is adjudicated in Latvia, the Courts Administration will receive the relevant application in the cross-border dispute forwarded by a competent authority of the other EU Member State or by the person and consider it in accordance with the procedure established by the Law on State-funded legal aid. In cases where a cross-border dispute is adjudicated outside of Latvia, the person whose habitual residence or domicile is in an EU Member State shall submit the relevant application to the Courts Administration (the application form is available at [https://e-justice.europa.eu/content\\_legal\\_aid\\_forms-157-en.do](https://e-justice.europa.eu/content_legal_aid_forms-157-en.do)). In such cases, the Courts Administration will send a completed form for the transmission of the legal aid application and the relevant documents to the competent authority of the relevant EU Member State within seven days of receipt of all translations.

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

The application form for State-funded legal aid is available:

on the website of the Courts Administration <https://www.jpa.gov.lv/> in the 'Services' section (Pakalpojumi) (<https://www.jpa.gov.lv/lv/juridiskas-palidzibas-sanemsanas-pieprasijuma-veidlapas>);

at the Courts Administration office, Antonijas iela 6, Riga;

at the offices of the local authorities in Latvian towns and municipalities where the person has their declared place of residence or where they legally reside.

The form for Legal Aid Application in another Member State of the European Union (in a cross-border dispute) is available on the European E-justice Portal in the 'Online forms' section ([https://e-justice.europa.eu/content\\_legal\\_aid\\_forms-157-en.do](https://e-justice.europa.eu/content_legal_aid_forms-157-en.do)).

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

The following documents must be enclosed with the application form for State-funded legal aid:

a copy of the document proving that the person is eligible for legal aid, e.g. a certificate that demonstrates that the individual has the status of a person in need or on a low income (or another document that proves that the person is eligible for State-funded legal aid);

copies of documents describing the nature of the dispute, proceedings of the case, etc. (e.g. an agreement, a court summons, a decision of the family tribunal).

Information on the conditions and procedures for provision of State-funded legal aid in other case categories is available at: <https://jpa.gov.lv/> (website of the Courts Administration, in Latvian) or <https://www.jpa.gov.lv/en> (website of the Courts Administration, in English).

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

The address of the Courts Administration: Antonijas iela 6, Riga, LV-1010.

Email: [pasts@ta.gov.lv](mailto:pasts@ta.gov.lv)

Free information line: +371 80001801 (for information on services provided by the Courts Administration and filling-in the forms).

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

People with a status of a person in need or on low income, people who are entirely dependent on the State or local authority, or people who have unexpectedly found themselves in such circumstances and financial situation that prevent them from ensuring the protection of their rights are entitled to State-funded legal aid.

State-funded legal aid is provided in out-of-court and in-court civil cases (including cross-border disputes), in appeal proceedings in administrative cases dealing with provision of asylum, or in appeals against decisions with regard to contested removal orders or against decisions with regard to contested forced expulsion orders.

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

The person must submit a completed request for legal aid (an application form) to the Courts Administration with copies of supporting documents relating to the information included in the application (documents that prove eligibility for State-funded legal aid and documents describing the nature of the civil dispute and related proceedings). The documents must be submitted to the Courts Administration in person, by post or email [pasts@ta.gov.lv](mailto:pasts@ta.gov.lv), using an electronic signature with a time stamp.

#### In order to be granted State-funded legal aid, the following documents must be submitted to the Courts Administration:

- 1) a completed application [form](#) for State-funded legal aid with a copy of the document proving the eligibility for legal aid, e.g. a certificate that demonstrates the status of a person in need or on a low income;
- 2) copies of documents describing the nature of the dispute, proceedings in the case, etc.

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

The Courts Administration concludes agreements with legal aid providers for the purposes of legal aid. When taking a decision to grant legal aid, the Courts Administration will assign a legal aid provider to the specific case.

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

The individual must cover the costs of the proceedings themselves, unless exceptions apply.

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

Costs not covered by legal aid must be covered by the individual.

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

#### The Courts Administration provides legal aid guaranteed by the State in the following cases:

- 1) In Constitutional Court proceedings, legal aid is provided to the person with regard to whose constitutional complaint the Constitutional Court has taken decision not to initiate proceedings solely on the basis of absence of legal grounds or their evident insufficiency to sustain the application;
- 2) in civil cases (except where the case concerns customs or tax-related matters, violation of honour and dignity, the case is directly connected with the person's commercial or business activities, or independent professional activities, etc.);
- 3) in administrative cases:
  - in appeal proceedings in cases dealing with provision of asylum;
  - in appeals against decisions with regard to contested removal orders or against decisions with regard to contested forced expulsion orders;
  - in appeals against a family tribunal decision with regard to protection of the rights and legitimate interests of a child;
  - in administrative cases where the court (the judge) has taken decision to provide State-funded legal aid in view of the complexity of the case and financial circumstances of the natural person.

*Partial* State-funded legal aid can be provided for a lawyer's assistance in specific types of civil cases:

- in cases seeking to invalidate a decision of a general meeting of participants or shareholders of a capital company;
- in cases concerning disputes stemming from contract law where the amount of claim exceeds EUR 150 000;
- in cases dealing with protection of commercial secrets from illegal acquisition, use and disclosure.

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

If the person does not need the legal aid granted, they can withdraw their application for legal aid before the proceedings are concluded, notifying the Courts Administration accordingly.

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

A decision of the Courts Administration to grant or refuse legal aid can be contested and appealed against in accordance with the procedure laid down in the [Law on administrative procedure](#) (Administratīvā procesa likums).

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

An application for legal aid does not suspend the limitation period.

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### Legal aid - Lithuania

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

Secondary legal aid (*antrinė teisinė pagalba*) costs are costs which the applicant is exempt from paying, namely: the costs of litigation in civil proceedings, the costs of constitutional proceedings, the costs of administrative proceedings, the costs of court cases relating to an administrative offence, the costs relating to hearing a civil action raised in a criminal case, defence and representation costs in proceedings (including appeal and cassation proceedings, irrespective of who initiates them), the costs of enforcement proceedings as set out in the Instructions for the enforcement of decisions, approved by the Minister for Justice, and the costs relating to the preparation of procedural documents, the collection of evidence, translation and representation in preliminary out-of-court dispute resolution procedures, where such a procedure is laid down by law or court decision. Travel costs are also paid where the applicant's presence is mandatory as laid down by law or recognised by the court.

In cross-border disputes in civil and commercial matters, state-guaranteed legal aid covers:

- 1) interpreting costs;
- 2) the costs of translating the application for legal aid and the supporting documents;
- 3) the costs of translating the essential procedural documents requested by the court or competent authority and submitted by the applicant;
- 4) the travel costs to be borne by the applicant where persons connected with the applicant's case are required to be present in court by Lithuanian law or by a court ruling and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

In cross-border disputes where the applicant is domiciled or predominantly resident in the Republic of Lithuania, state-guaranteed legal aid covers costs relating to:

- 1) legal aid granted in Lithuania before an application for legal aid was received in another European Union Member State in which the case is being heard or the judgment is to be enforced;
- 2) translating the application for legal aid and the supporting documents.

If you are entitled to 100% state-funded secondary legal aid, you are exempt from paying these costs. If you are entitled to only partial legal aid, you should pay the remainder of the costs yourself.

## 2 What exactly is legal aid?

Primary legal aid (*pirminė teisinė pagalba*), secondary legal aid (*antrinė teisinė pagalba*) and state-guaranteed extrajudicial mediation (*valstybės užtikrinama neteisminė mediacija*) are provided in accordance with the procedure laid down in the Law of the Republic of Lithuania on state-guaranteed legal aid (*Lietuvos Respublikos valstybės garantuojamos teisinės pagalbos įstatymas*).

You should apply for primary legal aid if you require legal information, legal advice, preparation of documents for state or municipal authorities, assistance with out-of-court dispute resolution, or preparation of a settlement agreement. Providers of primary legal aid also draw up petitions for divorce by mutual consent, divorce agreements, applications for a court order, objections to applications by creditors, applications for judicial authorisation to sell or mortgage immovable property, applications for judicial authorisation to accept an inheritance, and applications for prior judicial authorisation to enter into transactions involving the assets of a person who is legally incapacitated or has limited legal capacity in a certain field.

Primary legal aid is available in any Lithuanian municipality.

You should apply for secondary legal aid if you require preparation of procedural documents, defence or representation by a lawyer in legal proceedings, including enforcement proceedings, representation during the preliminary extrajudicial stage of a dispute, where such a procedure is required by law or court decision, or exemption from payment of lawyers' fees, procedural costs and other costs.

You should apply for state-guaranteed extrajudicial mediation if you are seeking amicable settlement of a civil dispute.

Decisions on the provision of secondary legal aid or state-guaranteed extrajudicial mediation are taken by the State-guaranteed Legal Aid Service (*Valstybės garantuojamos teisinės pagalbos tarnyba*).

All information on state-guaranteed legal aid can be found on the **Legal Aid Services Information System (Teisinės pagalbos paslaugų informacinės sistemos – TEISIS)** website:  <https://teis.is.lt/external/home/main>.

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

Primary legal aid is granted to Lithuanian citizens, citizens of a European Union Member State, persons lawfully resident in Lithuania or in another European Union Member State, and persons entitled to such aid under international agreements to which Lithuania is a party. All those listed above are entitled to a free one-hour consultation on the matter concerning them, regardless of their financial situation.

Providers of primary legal aid will give advice on settling a dispute out of court, provide information on the legal system, laws and other legal acts, help draw up a settlement agreement, help fill in an application for secondary legal aid where necessary, or prepare the procedural documents provided for by law.

Primary legal aid is refused if: the applicant's claims are manifestly unfounded; the applicant has already been given extensive advice on the same matter; it is clear that the person is able to obtain a lawyer's advice without state-guaranteed legal aid; the application does not relate to the person's own rights and legitimate interests, except in cases of representation as laid down by law; or abuse is being made of state-guaranteed legal aid or substantive or procedural rights.

Secondary legal aid is granted to the same group of people, but is subject to an assessment of personal (or family) assets and personal income.

Secondary legal aid may be granted to persons whose personal (or family) assets and personal annual income over the last 12 months do not exceed the normative levels laid down by the Lithuanian Government for receiving legal aid. It should be noted that persons seeking secondary legal aid must provide details of their movable and immovable property and that of their spouse.

Irrespective of personal (or family) assets or personal annual income, free secondary legal aid may be granted to, for example: victims of criminal acts; recipients of social security benefits; persons who have a severe level of disability or are recognised as unfit for work or have reached pensionable age and for whom a level of considerable special needs has been established in accordance with the procedure laid down by law; and other persons listed in Article 12 of the Law on state-guaranteed legal aid.

Secondary legal aid is refused if: the applicant's claims are manifestly unfounded; representation in the case is not viable; the applicant is claiming non-material damage in relation to defamation, but no material damage has been incurred; the application relates to a claim arising directly from the applicant's commercial or self-employment activities; the applicant is able to access the required legal services without the use of state-guaranteed legal aid; the application does not relate to violation of the applicant's own rights, except in cases of representation as laid down by law; the claim in respect of which secondary legal aid is being requested was transferred to the applicant with the aim of obtaining state-guaranteed legal aid; the applicant is abusing state-guaranteed legal aid or their substantive or procedural rights; the applicant refuses to pay part of the fixed secondary legal aid costs; examination of the merits of the claim reveals that the possible costs of secondary legal aid would exceed the size of the financial claim (financial interests); the applicant was granted secondary legal aid in another case but refused to pay the fixed secondary legal aid costs or part thereof by the specified deadline.

State-guaranteed extrajudicial mediation may take place if at least one of the parties to the dispute is entitled to secondary legal aid.

In cross-border disputes, where the personal (or family) assets and personal income of natural persons legally residing in another European Union Member State exceed the normative level laid down by the Government, but they indicate that they are unable to bear the costs of the proceedings, the State-guaranteed Legal Aid Service must establish whether the person in question is able to pay the costs of the proceedings, taking into account the cost of living in the other Member State in which that person is domiciled or predominantly resident, and may decide to grant secondary legal aid. In that case, whether the applicant is entitled to legal aid, in view of their personal (or family) assets and personal income, is assessed in accordance with the legislation of the place where they are domiciled or predominantly resident.


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

Yes, except in cross-border disputes. In cross-border disputes, state-guaranteed legal aid is granted in civil and commercial matters.

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


Yes. Where the presence of a defence lawyer or authorised representative is mandatory in criminal proceedings, the lawyer providing secondary legal aid services is appointed by the pre-trial investigation officer, public prosecutor or court hearing the case.

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

The application form for secondary legal aid, along with the supplementary documents, and the application form for state-guaranteed extrajudicial mediation, along with the supplementary documents, can be found on the website on state-guaranteed legal aid:  <https://vgtp.lt/en/links/requests>

For cross-border disputes, the application form to be submitted can be found on the e-Justice portal ([https://e-justice.europa.eu/157/EN/legal\\_aid\\_forms?clang=en](https://e-justice.europa.eu/157/EN/legal_aid_forms?clang=en))

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

The documents to be submitted can be found on the website on state-guaranteed legal aid:  <https://vgtp.lt/en/links/requests>

For cross-border disputes:

The legal aid application form (which must be signed by the person applying for legal aid or their authorised representative, who must provide evidence of authorisation).

Proof of identity: passport, identity card, permit of permanent or temporary residence in Lithuania / a European Union Member State.  
Documents supporting the claim (e.g. the court rulings already issued in your case, the contract, if your claims relate to the performance of a contract, etc.).  
A certificate (or attestation) issued by the competent authority of your state of residence, stating that you are entitled to receive free legal aid in your own state in accordance with the laws of that state.

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

To the State-guaranteed Legal Aid Service:

Odminių g. 3, 01122 Vilnius

Tel. 8 700 00 211

Fax 8 700 35 004

Email: ✉ [teisinepagalba@vgtp.lt](mailto:teisinepagalba@vgtp.lt)

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

Apply to the State-guaranteed Legal Aid Service.

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

Submit an application, together with the necessary documents, to the State-guaranteed Legal Aid Service.

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

The State-guaranteed Legal Aid Service.

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

If you are granted legal aid with the state funding 100% of legal aid expenses, you are exempted from paying lawyers' fees and litigation costs. If you are granted legal aid with the state funding expenses, you will have to bear the remaining share of expenditure on lawyers' fees and litigation costs. It should be noted that there is no exemption from paying the litigation costs incurred by the other party to the dispute, so if a person initiates court proceedings and the claim is dismissed by the court, the court may order that person to bear the litigation costs incurred by the other party to the dispute. In such cases, the state does not exempt you from paying the litigation costs incurred by the other party.

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

The costs are borne by the person receiving the partial legal aid.

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

Yes, secondary legal aid is also available for preparing an appeal and for representation at the court of appeal. It should be noted that, if secondary legal aid was granted at first instance, a new application must be submitted, along with all the necessary documents, to obtain secondary legal aid for the appeal process, and the State-guaranteed Legal Aid Service will assess whether you are eligible for legal aid in appeal.

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

Yes, if it transpires that the person to whom legal aid was granted withheld information or provided false information in order to obtain state legal aid. Legal aid may also be withdrawn at the person's own request, or if it transpires that the person is misusing the legal aid, not cooperating with the lawyer, etc.

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

Yes. A decision taken by the State-guaranteed Legal Aid Service may be appealed before the Lithuanian Administrative Disputes Commission (*Lietuvos administracinių ginčų komisija*) (Vilniaus g. 27, Vilnius) or Vilnius Regional Administrative Court (*Vilniaus apygardos administracinis teismas*) (Žygimantų g. 2, Vilnius) within one month of receipt of the decision.

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

No.

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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 using 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 costs

duties and fees relating to registration, mortgage and pledge

fees for certificates of 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 What are the requirements for legal aid to be granted?**

Persons with insufficient means are eligible for legal aid to defend their interests, provided that 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 into the territory, residence, right to settle or removal of foreign nationals.

Whether the applicant's means are insufficient is assessed on the basis of their total gross income and capital and that of any other members of the household.

Legal aid is refused to persons bringing an action which appears a priori to be unreasonable or 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 applicant or the defendant in contentious or non-contentious 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, manufacturers, craftspeople or professionals in relation to disputes concerning their business or professional activity, except in exceptional and duly justified cases; nor, in general, can it be granted for disputes arising from speculative activity by the person applying for legal aid.

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

In an emergency, legal aid may be granted provisionally, without further formality, by the Chair of the competent Bar Association (*Bâtonnier de l'Ordre des Avocats*) for the steps the Chair 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).

It can also be downloaded from the website of the Luxembourg Bar ([www.barreau.lu](http://www.barreau.lu)) or from the website of the Diekirch Bar (<https://avocats-diekirch.lu/fr/accueil>).

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

Any application for legal aid must be accompanied by:

a copy of the applicant's identity document;

the applicant's [certificate of registration with the Joint Social Security Centre](#) (*certificat d'affiliation au Centre Commun de la Sécurité Sociale - CCSS*) and that of each member of their household;

for the applicant and each member of their household: pay slips (or a CCSS income certificate (*certificat de revenu*), proof of payment of social inclusion income (*attestations de paiement du revenu d'inclusion sociale - REVIS*), unemployment benefit or a pension or other payments covering the last 3 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 3 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 rents its accommodation, a copy of the lease contract and rent receipts for the last 3 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 Chair of the Bar Association in the applicant's place of residence, or their delegate, decides whether to grant legal aid. For non-residents the decision is taken by the Chair of the Luxembourg Bar Council or their delegate.

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

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

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

In their decision, the Chair will give the name of the lawyer assigned to provide legal assistance and will ask you to contact that lawyer.

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

The Chair appoints the lawyer that the applicant has freely chosen or, if no lawyer has been chosen by the applicant or the Chair considers their choice inappropriate, the lawyer of the Chair'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 aid covers all costs relating to the proceedings, procedures or measures for which it was granted (see point 1).

However, legal aid does not cover compensation for procedural costs (*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, a new application for legal aid for that purpose will have to be submitted.

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

The Chair 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 inaccurate 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 Chair of any such changes in their situation.

The Chair'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 the Chair's decision to reject or withdraw legal aid to the Disciplinary and Administrative Council (Conseil disciplinaire et administratif), whose decision is final. Appeals must be lodged with the Chair of the Disciplinary and Administrative Council by registered letter within 10 days of receiving notice of the decision of the Chair of the Bar Association. The applicant is given a hearing before the Council or one of its delegated members.

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

An application for legal aid does not suspend the limitation period.

#### **Related 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 What are the requirements for legal aid to be granted?**

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 €13,000 (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 Jurisdiction) 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 avail himself or herself of 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 Agency who must file a reply as to whether the request has been accepted and the name of the lawyer.

Criminal appeals: If a person wishes to appeal with the assistance of a legal aid lawyer against a judgment delivered in the Court of Magistrates, one 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. Details of the judgement should be provided, in order to allow the assigned Legal Aid Advocate to determine whether there are sufficient grounds for appeal.

Persons under interrogation and/or arrest: If a person has 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.

##### The procedure

In civil proceedings, in order to make an appointment with the resident 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 person is eligible, under the means test, for the legal aid service. If a person is eligible, an appointment is fixed with the resident Legal Aid Advocate to discuss his or her problem and/or the case in question. Based on the merits test performed, the resident Legal Aid 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://legalaidservice.gov.mt/en/>

#### **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.

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

The request for legal aid does not have the effect to suspend the limitation period.

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Upozorňujeme, že verzia tejto stránky v pôvodnom jazyku [nl](#) bola nedávno zmenená. Na preklade zobrazenej jazykovej verzie v súčasnosti pracujeme.

## Legal aid - Netherlands

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

To bring the case to court, the claimant must pay court fees and any fees for a lawyer's legal assistance. These are the legal costs. If the court finds in the claimant's favour, the losing party is usually ordered to pay the claimant's legal costs. In this case, the losing party bears the costs that the claimant incurred to bring the case to court.

### 2 What exactly is legal aid?

Legal aid is legal assistance provided to a litigant in respect of a legal interest that directly affects the litigant personally, as long as the law or the associated provisions provide for such legal aid. In the case of subsidised legal aid, the costs of the lawyer are paid for by the State.

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

Whether or not you are eligible for subsidised legal aid depends on your aggregate income and the type of interest being defended. You can find more information on the website of the Legal Aid Board (*Raad voor Rechtsbijstand*). [📄 Home - Rechtsbijstand](#).

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

Yes. In the Netherlands, (subsidised) legal aid is granted at the advisory stage, and for all types of proceedings. However, see also the answer to the previous question. Subsidised mediation also exists in the Netherlands.

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

In civil law, it is possible to bring interim proceedings. In administrative law, it is possible to request a provisional measure at any stage of the proceedings, be it the initial complaint or the appeal in first or second instance.

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

In the Netherlands, the application for subsidised legal aid is submitted to the Legal Aid Board by a lawyer. To that end, the lawyer must be registered with the Legal Aid Board.

If you are from another EU Member State, you can submit an application through the transmitting authority in your Member State (usually the Ministry of Justice and Security, a court or another specially designated organisation). The application will be passed on to the receiving authority in the Netherlands, the Legal Aid Board.

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

Entitlement to subsidised legal aid is assessed by means of a financial test and a test of interest (see points 3 and 4). For the financial test, the Legal Aid Board must be given documentary evidence showing what your annual income was two years previously. If you can demonstrate that you qualify for subsidised legal aid in your Member State, this will be enough for the Legal Aid Board.

For the test of interest, you must submit supporting documents showing the interest in the case, such as what is the case about, how much money is at stake, whether the case is to do with your company's interests, or which steps you have taken to resolve the dispute.

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

Raad voor Rechtsbijstand  
Postbus 70503  
5201 CD Den Bosch  
Netherlands

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

You and, if applicable, your lawyer will receive a written decision on your application. This will show whether your application was successful. If the decision is not in your favour, you can appeal.

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

If you qualify for subsidised legal aid, in most cases, you will have to pay an own contribution to the lawyer; the amount is set by the Legal Aid Board.

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

In the Netherlands, you can choose your own lawyer. However, the lawyer must be registered with the Legal Aid Board. To find a lawyer, look here: [📄 Zoeken advocaat - Rechtsbijstand](#)

If this is not possible for you, the Legal Aid Board, as the receiving authority, can ask the president of the local branch of the Netherlands Bar to appoint a lawyer.

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

If you qualify for subsidised legal aid, you will still have to pay an own contribution to your lawyer. You will also have to pay court fees if you go to court. Fees may also be payable if you need to use the services of external experts or a bailiff. Finally, if the court finds against you, you may be ordered to pay the costs of the proceedings (including the other party's costs).

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

You do. You may be able to claim a contribution in your Member State.

### 14 Does legal aid also cover appeals?

Yes.

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

If, as a result of the case, you receive (a claim on) an amount greater than half of the threshold amount, the Legal Aid Board may decide to withdraw your right to subsidised legal aid. In this case, you will be deemed capable of paying for legal assistance yourself.

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

You can appeal to the Legal Aid Board against a Legal Aid Board decision regarding your eligibility for legal aid. You can contest a decision on such an appeal at the district court (*rechtbank*), and can appeal in second instance to the Administrative Law Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*).

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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 - Poland**

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

Costs of legal proceedings are the costs necessary for a person to assert or defend their rights before a court. They cover court costs and, where the party argues their case in person or through counsel other than an advocate (*adwokat*), attorney at law (*radca prawny*), or industrial property agent (*rzecznik patentowy*), the costs of travel to the court of the party or the party's counsel and an amount equivalent to the party's earnings lost as a result of their appearance in court, but not higher than the equivalent of the fee of one professional counsel, and where the party is assisted by counsel who is an advocate, attorney at law, or industrial property agent, the fee of that counsel.

Court costs include fees and expenses.

A fee is charged on each document lodged which is subject to the payment of a fee. Documents subject to the payment of a fee and the rates are set out in the Act of 28 July 2005 on court costs in civil matters (*Ustawa z dnia 28 lipca 2005 roku o kosztach sądowych w sprawach cywilnych*). The Act also lays down the rules for calculating the amount of expenses.

In particular, the following documents are subject to a fee:

statement of claim/counterclaim;

statement on the extension or modification of the claim as a result of which the value in dispute increases;

appeals (*apelacja* and *zażalenie*);

appeal to the highest instance (*skarga kasacyjna*) and appeal for a final judgment to be declared unlawful;

application to set aside a judgment by default;

complaint against a payment order;

primary intervention (*interwencja główna*) and secondary intervention (*interwencja uboczna*);

request to bring non-contentious proceedings;

petition for bankruptcy;

request for entry in/deletion from the land register,

request for entry in the National Court Register (*Krajowy Rejestr Sądowy, KRS*) and in the register of pledges, and for an amendment to or deletion of such entries;

application for revision of a judgment,

action for annulment of an arbitration award;

complaint against a decision of a judicial clerk;

complaint against the actions of the court bailiff;

request for the issue of the following documents on the basis of the case-file: a duplicate, extract, certificate, excerpt, other document or copy, and request for a copy of the land register (subject to a registry fee).

Expenses include inter alia:

travel expenses of a party exempt from court costs, related to the party's appearance in court, if such appearance has been ordered by the court;

reimbursement of travel and accommodation expenses and lost earnings or income of witnesses in connection with their appearance in court;

fees and reimbursement of costs incurred by expert witnesses, translators and guardians appointed for the party in the case;

flat-rate costs for collecting evidence from the opinion of a panel of court experts;

fees payable to other persons or institutions and reimbursement of their expenses;

costs of collecting other evidence;

costs of transport and safekeeping of animals and objects;

costs of placement and detention;

lump sums payable to court-appointed guardians for completing a background survey in matters concerning annulment of a marriage, divorce and legal separation, and for supervising court-scheduled parental contacts;

costs of a court doctor's certificate;

costs of mediation following referral by a court;

costs of announcements.

Unless otherwise provided by law, the party who lodges with the court a document that is subject to a fee or gives rise to expenditure is liable to pay the court costs.

Some entities are **exempt from court costs by law** (no request is necessary), for example:

a party requesting that paternity or maternity be established and asserting related claims (where an action for establishment of paternity proves to be manifestly unfounded, however, in its decision closing the proceedings, the court may order the applicant to pay the unpaid court costs, having regard to all the circumstances of the case);

a party claiming maintenance and the defendant in a case for reduction of maintenance;

a party requesting that contractual clauses be declared unfair;

an employee who brings an action or requests non-contentious proceedings, except where the value of the claim exceeds PLN 50 000, or a person who brings an appeal in social security cases;

a party to a case relating to mental health;

an incapacitated person in proceedings for the revocation or modification of their incapacity status.

Expenses are provisionally paid by the State Treasury if they relate to an action taken by the court of its own motion (e.g. when it admits evidence not sought by a party). Other expenses are provisionally covered by the party which has requested the action which gives rise to them. The court may require a party to pay an advance towards expenses, and will not take the requested action if the advance is not paid. The court rules on the reimbursement of any overpaid advance amounts and the settlement of the costs incurred in the final judgment.

At its final judgment, the court also decides who will ultimately bear the costs of the proceedings and in what proportion. In contentious proceedings, the rule is that all costs are borne by the unsuccessful party (that is to say, those paid by that party and those paid by the other party). If an action is successful in part, the court may order that the parties bear their own costs (decide that neither party is required to reimburse the other party's costs) or split them pro rata (with the less successful party ordered to reimburse the other party for a portion of the latter's costs, as set by the court). In non-contentious proceedings (conducted in many cases, for example to decide on important child matters, acquisition of inheritance, or termination of co-ownership), the rule is that the costs are mutually offset. However, depending on the situation, including the conduct of the parties during the proceedings, the court has discretion to order otherwise, for example have one of the parties pay all the costs, including those incurred by the other parties.

## 2 What exactly is legal aid?

Legal aid is provided to facilitate access to justice for people who are in difficult life or financial circumstances.

The following legislation governs legal aid:

a) in domestic cases: the Code of Civil Procedure and the Act on court costs in civil matters;

b) in cross-border cases: in addition to the laws referred to in (a) above, also by the Act on the right to legal aid in civil court proceedings conducted in the Member States of the European Union and on the right to legal aid with a view to the amicable resolution of a dispute before proceedings are brought (*Ustawa o prawie pomocy w postępowaniu w sprawach cywilnych prowadzonym w państwach członkowskich Unii Europejskiej oraz o prawie pomocy w celu ugodowego załatwienia sporu przed wszczęciem takiego postępowania*).

**Cross-border cases** are cases in which an applicant domiciled or habitually resident in another Member State of the European Union (with the exception of Denmark) applies for legal aid in proceedings conducted in or to be brought in the Republic of Poland or with a view to the amicable resolution of a dispute in a civil case for which the Polish courts have jurisdiction. These are also cases in which an applicant who is domiciled or habitually resident in the Republic of Poland applies for legal aid in proceedings conducted in or to be brought in another Member State of the European Union (with the exception of Denmark) or with a view to the amicable resolution of a dispute in a civil case where the courts of that State have jurisdiction.

Legal aid comprises:

exemption from court costs, so that the party does not need to pay in advance fees and expenses upon the initiation of the proceedings and while they are ongoing, inclusive of the cost of travel to the court, if the court orders the party to appear in person;

appointment of counsel by the court in the court proceedings, including for the preparation of the document instituting the proceedings (in cross-border cases, also for the purpose of providing legal advice and an amicable resolution to the dispute out of court), so that the party is represented by a professional lawyer at no cost;

in addition, in cross-border cases where the applicant has submitted an application for legal aid in proceedings conducted in or to be brought in another Member State:

a) exemption from expenditure covering the costs of translating the legal aid application in another Member State and the necessary documents in support of the application;

b) the appointment of an advocate or attorney at law for the purpose of providing legal assistance to an applicant in the Republic of Poland for proceedings conducted in or to be brought in another Member State, until the date on which the application for legal aid is received by the competent authority of that Member State.

Legal aid may be full or partial. In the latter case, it may only cover the appointment by the court of counsel without exemption from court costs or the appointment by the court of counsel with partial exemption from costs (e.g. a specific portion thereof or a specific item of costs).

*In Poland, ad hoc legal aid as part of what is referred to as 'free legal aid' (nieodpłatna pomoc prawna) is also available. Free legal aid is governed by the Act of 5 August 2015 on free legal aid, free civil counselling and legal education (Ustawa z 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej, nieodpłatnym poradnictwie obywatelskim oraz edukacji prawnej). Free legal aid covers:*

*free-of-charge legal advice provided by an advocate or an attorney at law, also with regard to ongoing court proceedings;*

*free-of-charge preparation of a draft document, with the exception of procedural documents in ongoing court proceedings;*

*free-of-charge preparation of an application for exemption from court costs and/or for the appointment by the court of counsel in ongoing court proceedings;*

*free-of-charge mediation.*

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

Legal aid in court proceedings is available to both natural and legal persons, as well as to organisational units entitled by law to be a party in such proceedings.

A natural person can be exempted from court costs if they are unable to bear such costs without hardship to themselves or their families or would put them at risk of such hardship.

A legal person or an organisational unit other than a legal person entitled by law to be a party to court proceedings may be exempted if it lacks sufficient means to pay the costs. Commercial companies (except where the State Treasury is the sole partner or shareholder) should also demonstrate that their partners or shareholders do not have sufficient means to increase the company's assets or grant a loan to the company.

Social organisations not involved in business activities may also apply for an exemption from court costs in their own cases conducted in connection with social, scientific, educational, cultural, sporting, charitable or self-help activities as regards consumer protection, environmental protection and social welfare.

**There are no fixed income thresholds for receiving legal aid.** The court exercises its discretion in that respect, having regard to the composition of the party's revenue, assets and expenditure, including the number of dependent persons they have. The court may also conclude that the party lacks sufficient means to cover counsel's fees, but has sufficient means to cover some or even all of the court costs.

Moreover, in domestic proceedings, the court may refuse to appoint counsel, even when the party cannot afford to pay, if it considers that there is no need for the involvement of counsel. In practice, this occurs when the case is not complicated, especially if the party has shown in the proceedings so far that they are familiar with the law and procedure.

In cross-border proceedings, the court may refuse legal aid to persons resident or staying in another EU Member State, with the exception of Denmark, if the relief sought or the defence of rights is manifestly unfounded. Legal aid may also be refused on grounds relating to the substance of the case, if the applicant has been granted legal aid previously in that case for the amicable resolution of the dispute before the initiation of civil court proceedings, but no settlement was reached.

A formal condition for obtaining legal aid is that the application must be submitted to the court in the manner set out in points 6 to 8 below.

Notwithstanding the above, a person with no command of the Polish language may, upon request submitted to the court hearing the case (or which should hear the case, if the request is lodged before the initiation of proceedings), be granted the **assistance of an interpreter free of charge during the hearing**. The request does not need to meet formal requirements like those for legal aid applications. This is laid down in Article 5 of Act of 27 July 2001 on the organisation of ordinary courts (Ustawa z dnia 27 lipca 2001 roku prawo o ustroju sądów powszechnych). By contrast, a party seeking free assistance with the translation of pleadings and documents required to be submitted to the court must have made a simple request for legal aid.

*Only natural persons, including sole traders who do not employ other persons (self-employed persons), are eligible for free legal aid if they are unable to bear the costs of paid legal assistance.*

*An advocate or attorney at law may refuse to provide free legal aid for imperative reasons, informing the eligible person of other centres which provide free legal aid within the district (powiat).*

*If it is found that the problem communicated by the eligible person cannot be resolved entirely or in part through the provision of free legal aid, in particular that the problem is not only legal in nature, the advocate or attorney at law is to inform the person of other possibilities for obtaining appropriate assistance from providers of free advisory services. For instance, they may provide information on the services of an entity giving free advice, in the form of an advice information sheet (karta informacyjna poradnictwa).*

*Additionally, where free legal aid is to cover free mediation, it will not be granted if the case has been referred for mediation by a court or other authority and where there is a reasonable suspicion of violence in the parties' relationship.*

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

Yes. Legal aid is available in all civil cases, including family, commercial, employment and social security matters (e.g. retirement pensions and annuities).

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

There is no specific procedure for emergencies.

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

There is no official application form for legal aid in national proceedings. A request is simply made in writing or orally for the record.

In cross-border cases, use can be made of the official form set out in the Annex to Commission Decision No 2004/844/EC of 9 November 2004 establishing a form for legal aid applications pursuant to 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. The forms are available at the registries of the courts where the proceedings are pending or are to be brought. They can also be downloaded from the website of the Ministry of Justice. However, use of the form is not mandatory. An application should include a statement giving details of the applicant's family status, assets, income and sources of livelihood. An application for legal aid for the amicable resolution of the dispute before the initiation of civil court proceedings must also contain a detailed account of the facts of the case.

**Using a form is mandatory only for cross-border cases in which proceedings are being conducted in another Member State** and involve a person who is a Polish national or has the right of permanent residence in Poland.

In cross-border cases, the application may be submitted not only in Polish but also in English.

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

An application for exemption from court costs or for the appointment by the court of counsel in national proceedings must include a declaration on family status, assets, income and sources of livelihood in accordance with the template specified in the Regulation of the Minister of Justice of 3 October 2016 on the payment by the State Treasury of free legal aid provided by a court-appointed advocate (*Rozporządzenie Ministra Sprawiedliwości z dnia 3 października 2016 r. w sprawie ponoszenia przez Skarb Państwa kosztów nieopłaconej pomocy prawnej udzielonej przez adwokata z urzędu*). The templates are available in electronic format in Polish on the courts' websites, on the website of the Ministry of Justice and in paper form at court registries. This is a formal requirement, and **failure to rectify any shortcoming in this respect within one week of the court's request gives rise to dismissal of the application**. If the circumstances given in the application raise concerns, the court may order an enquiry into the actual circumstances of the applicant, in particular by requesting the latter to provide additional clarification or documents.

In cross-border proceedings, a person who is resident or permanently resident in another EU Member State, with the exception of Denmark, is required to attach the following to the application:

documents confirming the details in the application;

supporting documents in respect of the applicant's nationality, place of residence or habitual residence and, if the applicant is not a national of a Member State, a supporting document confirming that the applicant is residing in the territory of the Member State in compliance with the law of that State;

a statement by the applicant on whether the applicant has already been granted legal aid for the amicable resolution of the dispute concerned and, if such aid has been granted, but no settlement has been reached, clarification of the reasons for this.

The above documents should be translated into Polish or into English by a person qualified to translate official documents in the Member State from which the request originates.

If an application in cross-border proceedings does not contain any of the information required or raises concerns as to its accuracy, the court will request the applicant to provide additional clarification or documents within a prescribed time limit of no more than one month. In particular, the applicant may provide copies of tax returns, statements and extracts of bank accounts, bank deposits or securities deposits, or certificates indicating the amount of salary, fees and other remuneration or benefits earned, pensions, annuities and alimonies. **In the event of failure to comply with the time limit, the court will examine the application on the basis of the information provided.**

In practice, for an application in national or cross-border proceedings to be expedited, it should be accompanied from the outset by all documents the applicant considers necessary to prove their financial situation, in particular those referred to above.

*If free legal aid is sought, the application must include the applicant's declaration concerning lack of sufficient means to bear the costs of paid legal assistance. A person seeking free legal aid with regard to their business activity must submit in addition a declaration that they have not employed any other*

persons in the last year. The above declarations must be drafted in accordance with the pre-defined templates available at free legal aid centres. The declarations are to be submitted to the person providing the free legal aid.


Since free legal aid is typically provided directly at the centre after the application is made, the applicant should also carry an identity document and all documents necessary to present the legal issue, so that the aid provided is effective.

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

An application for exemption from court costs or for the appointment by the court of counsel must be submitted to the court before which the proceedings in a national dispute are to be brought or are already ongoing.

A natural person resident or habitually resident in an EU Member State (with the exception of Denmark) who applies for legal aid in cross-border proceedings which are ongoing or to be brought before a Polish court may apply for legal aid to the court where the declaratory proceedings are ongoing or to be brought. If the application concerns legal aid in execution or enforcement proceedings, it must be lodged before the district court competent for the area where the decision is to be executed or where the enforcement will take place. Applications for legal aid may also be submitted through the Polish Ministry of Justice or a designated competent authority of the Member State where the applicant is resident or habitually resident. The Ministry of Justice will promptly forward such applications to the competent court.

A natural person resident or habitually resident in Poland who is seeking legal aid in proceedings which are ongoing or to be brought in another Member State (with the exception of Denmark) may lodge the application before the competent court of the other Member State. The application may also be submitted through the regional court competent for the place of residence or habitual residence in Poland.

An application for legal aid under the free legal aid scheme can be submitted to one of the free legal aid centres in Poland, which are established in districts and cities with district status. For a map of the centres and contact details see:  <https://darmowapomocprawna.ms.gov.pl/pl/mapa-punktow/>

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

The Polish court will serve on the applicant its decision about the application for exemption from court costs or the appointment of counsel by the court. Information about the status of the application and whether or not it has been granted may also be obtained by telephone or email from the court registry. Applicants for free legal aid will be informed directly whether they are eligible at the centre where the free legal assistance is provided.

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

No further action is required if an exemption from court costs is granted. However, if there are costs the exempted party must incur to have their rights protected (e.g. translation costs or costs of travel to the court, if the party has been summoned to appear in person), the party will need to apply to the court for an advance towards such costs. Otherwise, it may be that the court will expect the party exempted from court costs to cover the costs temporarily, which will then be reimbursed to them. If an advance is granted, it must be settled on the basis of invoices within one month of receipt of the advance, and in any event before a decision is issued on the final settlement of the costs of the proceedings.

If an advocate or an attorney at law is appointed, they should be contacted. The court may serve on the applicant a copy of the decision appointing an advocate or attorney at law but without details of the full name and address for service of the advocate or attorney at law appointed. The court will communicate those details in a subsequent letter, after it has been informed thereof by the competent regional bar council or the regional chamber of attorneys at law.

A person exempted by the court from all or some court costs prior to the initiation of court proceedings is required to attach a copy of the exemption decision to the application or other document initiating the proceedings.

*In the framework of the free legal aid scheme, a person found to be eligible for legal aid will receive it directly in the expected form at the free legal aid centre.*

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

An advocate or attorney at law, as applicable, is appointed by the competent regional bar council or regional chamber of attorneys at law, but if specific counsel is named in the application, they will be appointed as the applicant's counsel to the extent possible and with their agreement. The advocate or attorney at law may refuse to deal with the case on imperative grounds, in which case the self-regulatory body will appoint other counsel. A change to an already appointed counsel may be requested in the course of the proceedings, also on imperative grounds.

It is possible to state a preference in the request to the effect that counsel should have good command of a certain foreign language and come from a specific branch of the legal profession, in particular that they should be an advocate or an attorney at law. In practice, the court will grant such a request.

*In the free legal aid scheme, it is not possible to choose an advocate or an attorney at law. Such legal aid will be provided by the advocate or attorney at law on duty at the legal aid centre of the applicant's choice or by a legal trainee authorised by that advocate or attorney at law.*

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

A party granted a complete exemption from court costs will not pay any court fees and will not incur any expenses. If exempted from court costs in part, the party must cover the court fees and expenses insofar as they are not covered by the exemption. If that party wins the case, the court will order the unsuccessful party to reimburse those costs to the successful party in the decision closing the proceedings.

If a party exempted from court costs is wholly or partly unsuccessful, in its closing decision the court will order that party to reimburse the costs of court proceedings incurred by the opposing party (but not those incurred by the State Treasury).

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

A person exempted from court costs in part is required to pay the remaining court costs.

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

Legal aid granted by the court of first instance also includes appeal and enforcement proceedings. A party not represented by counsel (e.g. an advocate) at first instance may apply for that form of assistance at second instance. Where it is necessary to bring an extraordinary appeal, the party must submit a special request, which will lead to a specific decision on that legal step only.

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

The court may withdraw legal aid, both in the form of an exemption from court costs and the appointment by the court of counsel, if it is found that the reasons on the basis of which it was granted did not exist or have ceased to exist. In either case, the party will be required to pay all the applicable fees and to reimburse the expenses, except that in the latter case, the court may also order the party to do so only in part, in accordance with the change in the party's situation.

When withdrawing an exemption, the court may penalise a party exempted from court costs on the basis of circumstances misrepresented knowingly, with a fine of up to PLN 1 000, and a party granted the assistance of court-appointed counsel on the basis of such circumstances with a fine of up to PLN 3 000. Independently of the obligation to pay the fine, the party must pay all the applicable fees and cover the expenses for which the party is liable, or pay the fees of the court-appointed counsel.

A person re-applying for exemption from court costs who has knowingly misrepresented their circumstances as regards family status, assets, income and sources of livelihood, will have the application rejected by the court and will be required to pay a fine of up to PLN 2 000.

An appeal may be brought against a decision to fine a party, as set out in point 16 below.

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

Yes. An appeal may be brought against a decision refusing an exemption or the appointment by the court of counsel or, if it was issued by a judicial clerk, a complaint may be lodged against the decision of the latter. **Before a decision is challenged, a request for a written statement of reasons must be submitted within one week of service of the decision. After receiving the decision with written statement of reasons, the appeal must be brought within one week,** addressed to the court which issued the decision. No fees are charged on a request for a written statement of reasons or an appeal or complaint against a judicial clerk's decision. A similar procedure applies in the event of withdrawal of a previously granted exemption from court costs or of the appointment by the court of counsel.

*By contrast, a person refused free legal aid cannot challenge such refusal.*

#### Further information

Act of 28 July 2005 on court costs in civil matters;

Code of Civil Procedure of 17 November 1964;

Act of 17 December 2004 on the right to legal aid in civil court proceedings conducted in the Member States of the European Union and on the right to legal aid with a view to the amicable resolution of a dispute before proceedings are brought;

2004/844/EC: Commission Decision 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;

Act of 5 August 2015 on free legal aid, free civil counselling and legal education;

<http://www.darmowapomocprawna.ms.gov.pl/>;

<https://www.gov.pl/web/sprawiedliwosc/formularze>

websites of individual district and regional courts.

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

In cases of applications for exemption from court costs, the lodging of the relevant application or an appeal against a decision refusing exemption will not, in principle, suspend the ongoing proceedings, unless the applicant has obtained an exemption from court costs as a result of an application made in the statement of claim or before the action was brought. In the event of the definitive dismissal of an application submitted before the expiry of the time limit for payment of the fee for the pleading, the time-limit for payment will start to run again from the date of service of the request for payment or, in certain cases where the party is represented by an advocate or attorney at law, from the date of service of the decision dismissing the application for exemption from costs. However, any new application for exemption from legal costs based on the same circumstances no longer affects the time limit for payment of the fee.

Also in cases of applications for the appointment of counsel by the court, the lodging of the relevant application or an appeal against a decision refusing such appointment will not, in principle, suspend the ongoing proceedings, unless the application was made in the statement of claim or before the action was brought. However, the court may suspend hearing the case until a final decision has been taken on the application. Accordingly, it may not fix a hearing but may cancel or postpone a hearing scheduled.

Where legal representation by an advocate or attorney at law is mandatory for a particular procedural act (lodging of an appeal to the highest instance (*skarga kasacyjna*), application for revision of a judgment, certain appeals against court decisions), the submission of an application for the appointment of counsel by the court before the expiry of the time limit for carrying out such action will stop the time limit. Whether the application is granted or rejected, the time limit will start to run again. However, any new application based on the same circumstances no longer affects the running of the time limit.

#### Further information

Act of 28 July 2005 on court costs in civil matters;

Code of Civil Procedure of 17 November 1964;

Act of 17 December 2004 on the right to legal aid in civil court proceedings conducted in the Member States of the European Union and on the right to legal aid with a view to the amicable resolution of a dispute before proceedings are brought;

2004/844/EC: Commission Decision 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;

Act of 5 August 2015 on free legal aid, free civil counselling and legal education;

<http://www.darmowapomocprawna.ms.gov.pl/>;

<https://www.gov.pl/web/sprawiedliwosc/formularze>

websites of individual district and regional courts.

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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 [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. In 2023, the value of 1 UC will remain unchanged 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.).

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

Access to the law and to the Courts is provided for under [Law No 34/2004 of 29 July 2004](#).

Under the terms of Article 6 of Law No 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 No 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 No 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 fee (such as for the serving of a summons, for the measures needed to carry out the seizure of assets, and other enforcement procedures).

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

By virtue of Article 7 of Law No 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 No 34/2004 and Article 7 of [Ministerial Implementing Order No 46/2015 of 23 February 2015 \(Portaria n.º 46/2015\)](#), 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;

in administrative offence proceedings.

Useful links:

[State-run family mediation system \(in Portuguese\)](#)

[State-run labour mediation system \(in Portuguese\)](#)

### 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 No 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 on which 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 on which 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 No 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 either 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 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. Where 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 No 34/2004.

Under the terms of Article 26 of Law No 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 on the form as their correspondence address.

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

When legal counsel is appointed 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, which will then notify the applicant under the terms of Articles 30 and 31 of Law No 34/2004.

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

Legal aid covers the expenses outlined in Article 16 of Law No 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 No 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 in 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 No 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 No 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 No 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 No 34/2004.

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

Yes, the request for legal aid may have the effect of suspending the limitation period.

When a request for legal aid is submitted, in the form of appointment of legal counsel, and the document confirming this request is joined to the proceedings, the limitation period under way is interrupted, five days after the date on which the request for legal aid was submitted (Article 33(4) of Law 23/2004 of 29 July 2004 and Article 323(1) and (2) of the Civil Code).

Consult some case-law published on this matter here:

- The Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*)

 [Processo 439/11.5TTLR.S.L1-4](#)

 [Processo 7637/17.7T8LSB.L1-2](#)

- The Supreme Court of Justice (*Supremo Tribunal de Justiça*)

 [Processo 31/14.3TTCBR.C3.S1](#)

#### **Warning:**

**The EJM-Civil Contact Point, the courts, and other bodies and authorities are not bound by the information set out in this factsheet. It is also still necessary to read the legal texts in force. These are subject to regular updates and evolutionary interpretation of case-law.**

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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:

- 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 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 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 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 12 national gross minimum salaries over a one-year period in the year when the aid application was lodged.

*(Articles 6, 7, 20 and 44 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 500 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 800, 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?

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

Surname and forename	Relationship to the applicant (for minors)	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 cohabitee	III. Dependent persons	IV. Persons supporting
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	I. Applicant	II. Spouse or	III. Dependent	IV. Persons
expenses		cohabitee	persons	supporting
		the		
			applicant	
Taxes:				
Social				
security contributions:				
Local taxes:				
Mortgage				
costs:				
Rent and housing				
costs:				
Education				
costs:				
Education				
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, 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.

*(Article 23 and Article 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 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 12 national gross minimum salaries over a one-year period in the year when the aid application was lodged.

*(Articles 6, 7 and 44 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 19 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 acknowledgement 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 13.1 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).*

## 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.

*(Article 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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## Legal aid - Slovenia

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

The costs of legal proceedings are expenses that arise during, or because of, legal action. In civil proceedings, these costs comprise court fees and the costs of lawyers and other individuals entitled to remuneration under law, such as court-appointed experts, valuers, interpreters, bailiffs, and others.

### 2 What exactly is legal aid?

Free legal aid is a person's right to be compensated, in full or in part, for the costs of legal assistance and to be exempt from paying the costs of legal proceedings. The purpose of free legal aid is to ensure that the right to judicial protection is put into practice. Free legal aid is awarded to individuals based on their social status, if they can show that they would not be able to afford judicial protection without jeopardising their own economic wellbeing or the economic wellbeing of their family.

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

In order to be eligible for **free legal aid**, you must fulfil certain financial and case-specific conditions:

#### (1) Financial conditions

**Your monthly income, or the average monthly income per member of your household, must not be higher than double the minimum wage.** If you meet this condition, you may be entitled to the reimbursement of all or part of the costs of legal aid, and be exempt from paying the costs of legal proceedings. The applicable minimum income amount since March 2022 has been €421.89 ([source](#)). Examples of sources of income that are added up to calculate the minimum income amount are: net wage, child benefit, maintenance allowance, benefits in cash, inheritance, gifts, severance pay, damages and payment for student work.

**Your assets, or those of your family, must not exceed a set amount, i.e. €20,250.72.** This includes immovable property (except the flat/house you live in, if its value is below a set threshold), cars and other vehicles, boats, equity stakes, shares, savings and other movables.

#### (2) Case-specific condition

The court will assess your case and the likelihood that the outcome is in your favour. The court will consider the circumstances and facts of the case for which you are requesting free legal aid. Your application must be sound (the case must not be patently irrational) or it must be at least probable that the court would decide in your favour.

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

Yes, free legal aid is granted in all court proceedings. It can be granted for legal advice, legal counsel and other legal services, for all forms of judicial protection before all general jurisdiction and specialised courts in Slovenia, before the Constitutional Court (*Ustavno sodišče*) and before all bodies, institutions and persons in Slovenia competent for extra-judicial settlement of disputes. Free legal aid can also be granted in respect of proceedings before international and arbitration courts where the rules of the international or arbitration court fail to provide for, or deny an individual, such aid.

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

Yes. In an emergency, free legal aid is provided immediately, irrespective of the conditions laid down in point 3 above. An emergency means a situation in which the procedure for granting free legal aid or the act of producing and submitting an application for free legal aid would take so long that the applicant would miss a deadline, and thus forfeit their right, to perform a legal act. Emergency free legal aid is granted only where the applicant has to perform a legal act in order to avoid repercussions (e.g. debarment).

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

The application form is available [here](#). Use [this form](#) to submit details of your family members.

You can apply for free legal aid without completing a form. If you do so, make sure to provide the following information:

for yourself – full name, tax No, personal ID No, permanent or temporary address;

for your family members – full name, tax No, personal ID No, permanent or temporary address;

for NGOs and associations referred to in point 4 of the first paragraph of Article 10 of the Free Legal Aid Act (*Zakon o brezplačni pravni pomoči*) – business name, registered address, tax No and ID No;

details of the case;

information about the form and extent of free legal aid.

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

Along with your application you must provide documents on the court case for which you are requesting free legal aid.

Information on the assets registered in your name is obtained by the competent authorities themselves from the official records.

If you are not a Slovenian national, you must provide information on any income received and assets owned by you and your family members in addition to the details referred to in point 6 above.

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

Applications (with the relevant enclosures) can be sent by post or submitted in person at a district court (*okrožno sodišče*), labour and social court (*delovno in socialno sodišče*) or administrative court (*upravno sodišče*) on working days between 8.00 and 16.00.

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

The court's free legal aid service examines your application and your financial situation and decides whether and to what extent you qualify for free legal aid. The court then issues a decision by which it either grants or denies you free legal aid, and sends it to you by post.

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

The decision granting you free legal aid is accompanied by a letter of referral, which you have to present to the lawyer of your choice or the one that has been assigned to you.

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

You are free to choose your own lawyer before applying for free legal aid. Before entering the lawyer's name on the application form, make sure that they do in fact provide free legal aid. If you do not indicate the name of a lawyer on the application form, a lawyer will be assigned to you from the list of lawyers who provide free legal aid.

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

Free legal aid covers all the costs specified in the court's decision granting free legal aid. This may include all costs of the proceedings.

**Under no circumstances does free legal aid cover the costs of the proceedings, actual expenses and costs of legal representation incurred by the other party.**

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

When you have been granted partial free legal aid, you have to bear any remaining costs yourself.

## 14 Does legal aid also cover appeals?

Whether or not free legal aid covers legal remedies depends on the scope of the aid granted. Free legal aid usually covers legal advice and legal counsel at the first and second instances, which means that it also covers ordinary legal remedies. It can be granted to cover extraordinary legal remedies, but it must be requested separately for that purpose.

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

You have to meet the eligibility conditions for the entire duration of the period for which free legal aid has been granted to you. If, at any point during the proceedings, your financial situation improves to the point where you no longer meet the conditions for receiving such aid, your right to free legal aid will be revoked.

Likewise, you will have to pay back any sum awarded to you as legal aid if you win the court case and receive any assets as a result, or sometimes even if you lose the court case and receive no assets, but your financial situation improves in the year following completion of the proceedings to a point where you no longer meet the conditions for free legal aid. **However, you never need to pay back more than you have received.**

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

You can contest a decision by which the court has denied you free legal aid by initiating administrative proceedings within 30 days. Your application for administrative proceedings must be lodged with an administrative court (*upravno sodišče*).

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## 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 (the 'Legal Aid Act'). Section 4(a) of the Legal Aid Act reads as follows: '(L)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, including the facilitation of dispute resolution through mediation, 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..'

For more information, see the [Legal Aid Centre's website](#), which is also available in [English](#).

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

The Legal Aid Centre also provides preliminary consultation.

Any natural person can make use of preliminary consultation. Preliminary consultation focuses on:

- (a) explaining the conditions under which legal aid is granted;
- (b) providing basic legal advice;
- (c) pointing out the risk of missing a deadline in a particular case;
- (d) assisting in filling in an application for legal aid.

A preliminary consultation is provided for one legal case, once only and for no more than one hour. A fee of EUR 4.50 for the provision of one preliminary consultation is laid down by the Legal Aid Act.

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.

**Natural persons are entitled to receive legal aid if they simultaneously meet the following three conditions** (These conditions must be met by natural persons in the case of in-country disputes; personal insolvency proceedings are not covered by these provisions.):

**(a) the natural person is in material need**, i.e. they are in receipt of a material-needs allowance and the associated benefits, their income does not exceed 1.4 times the subsistence minimum (or does not exceed 1.6 times the subsistence minimum where legal aid is provided with the applicant's contribution under the conditions laid down by the law) and they are unable to access legal services using their own assets (the documents proving the level of income may not be more than three months old);

**(b) the dispute is not manifestly without merit;**

**(c) the value of the dispute exceeds the value of the minimum wage laid down by the relevant legislation** (this does not apply to disputes where the value of the dispute cannot be determined, for example when parental rights and obligations in respect of minors are being decided upon).

#### **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.

Matters of criminal law are outside the scope of the Legal Aid Centre.

#### **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; they have to demonstrate the risk of missing a particular deadline. 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](#) and in any Legal Aid Centre office.

#### **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, temporarily or habitually resident. For more information, see the [Legal Aid Centre's website](#).

#### **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 (60 days in the case of cross-border applications); the decision is sent by registered mail and delivered to the addressee in person, or it is sent electronically with an authenticated electronic signature using the applicant's activated electronic mailbox.

#### **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 within three months of the final decision granting legal aid being issued.

#### **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, a legal adviser from the Centre or a mediator to represent the eligible person in court or in a mediation procedure 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, entitlement to legal aid with the applicant's 20% contribution towards the legal costs, 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 ordinary and extraordinary appeal proceedings and enforcement proceedings.

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

Yes, legal aid can be withdrawn before proceedings are brought to a final conclusion. 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 the 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 eight days with evidence demonstrating that the eligible person still qualifies for legal aid).

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

Where the procedure has been discontinued pursuant to the Code of Administrative Procedure (for example because of a failure to submit the required documents), it is possible to lodge an appeal in administrative proceedings within 15 days of receiving the decision.

Where the procedure or, more precisely, the application for legal aid was not granted pursuant to Act No 327/2005 as amended (for example because the dispute is manifestly without merit or because the applicant does not meet the income criterion), it is possible to lodge an appeal with an administrative court in the form of an administrative-law action within 15 days of receiving the decision.

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 if there is a change in their income or financial circumstances, they may re-submit an application for the same case only six months after the decision is issued.

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

In general, a request for legal aid does not have the effect of suspending the limitation period. The only exception is the time-limit for bringing an action in an administrative court. If, before bringing an action, an applicant asks the Legal Aid Centre to provide a lawyer under special legislation, the time-limit for bringing an action in an administrative court is suspended from the date of such request until the final decision on the request is issued.

Where there is a risk of missing the time-limit and where the request was not obviously submitted under time pressure (on the last day of the time-limit), the Legal Aid Centre may decide that entitlement to legal aid in respect of a specific procedural act (such as bringing an action, participating in a hearing, etc.) should be provisionally granted even before the request for legal aid has been assessed; this could even be done repeatedly for various procedural acts, provided that it is possible to accurately identify the procedures and rights that may fall foul of the statute of limitations, and provided that the documentation and evidence submitted with or specified in the request make it possible to perform the procedural act concerned.

Pursuant to the Act, the Centre may also charge *ex-post* the costs of the proceedings in the amount determined under special legislation if it follows from the assessment of the conditions for entitlement to legal aid that the applicant does not meet those conditions.

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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 according to the nature and scope of the case. Legal costs include, for example, the fees and expenses of legal assistance, costs arising from the cost of compensating witnesses and of providing interpretation and translation services, handling charges and document charges collected by authorities, and enforcement fees payable to the state. Legal assistance fees account for most of the costs involved in legal proceedings. As a rule, each party bears its 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 made available at the state's expense to persons who need expert assistance in a legal matter but who are unable to meet the costs of proceedings owing 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 made available to the applicant by telephone or other electronic means of communication.

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

Legal aid is made available 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 made available 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 made available to a company or a corporation. Legal aid is made available to an entrepreneur in a business matter other than a court case only if there are special reasons for doing so.

Legal aid is made available 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 made available 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 made available 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 made available 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 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*] if the matter is urgent.

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

The legal-aid application form can be obtained from <https://oikeus.fi/oikeusapu/fi/index/asiointi/lomakkeet.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 concerning their financial circumstances and the matter for which legal aid is being applied, as well as concerning legal-expenses insurance (see Question 6 on the legal-aid application forms). At the legal-aid office's request, 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 whether the applicant is entitled to legal aid on the basis of their financial status and whether the applicant has 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 made available 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 legal counsel's fees or dues, either in full or in part, depending on the recipient's available funds and savings. Legal aid covers the services of a legal counsel for a maximum of 80 hours, unless the court decides to extend the legal aid for specific reasons. In a legal matter outside court, the 80-hour ceiling is absolute. Legal aid also covers interpretation fees and translation costs, fees for giving evidence in court and costs of producing necessary evidence, such as medical evidence.

If the applicant has legal-expenses insurance and has been granted legal aid free of charge, the State may pay the legal-expenses insurance deductible. Costs exceeding the insurance ceiling may also be paid for particular reasons. The amount to be paid is indicated in the legal-aid decision.

From the court and other authorities the legal-aid recipient receives free-of-charge the documents necessary for dealing with the case, copies of official documents, service, etc., and notices in the Official Gazette and enforcement attempts.

An applicant who is entitled to free legal aid on the basis of their available funds and who is not deemed to be in need of a legal counsel may be exempted from the above-mentioned fees.

The State does not pay the other party's costs in the event that the legal-aid recipient loses the case.

#### **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 made available by a public legal counsel, the legal-aid recipient must pay the deductible to the legal aid office. If legal aid has been made available 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?**

Yes. Legal aid covers all the applicant's necessary legal costs, 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 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 a legal-aid recipient's deductible is amended, a decision is made on whether the amendment is to be applied retroactively. When it is decided that the legal aid should cease, 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 legal-aid office's decision is accompanied by instructions on submitting that decision to a court for reconsideration (submission). The reconsideration shall be made in writing and forwarded to the legal-aid office that took the decision. The legal-aid office may also amend its decision itself. If the legal aid office considers there to be no need for amendment, it shall refer the request for a decision to a court for review. The court may also modify the legal-aid office's reconsideration to the detriment of the applicant.

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

With a legal-aid application, legal aid is sought for a specific matter. A legal-aid application does not bring a case before a court or postpone the expiry of the statute of limitations.

### **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 compensatory amounts paid from state funds. If the suspect meets the financial prerequisites for legal aid, the amount of reimbursement may not exceed that made available 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 24 150 (EUR 2 270), 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 \(1996:1619\)](#) (*rättshjälpslagen*).

## 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 1 802.50 (approximately EUR 170) 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 (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 24 500). 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.

See the digital guide at: <https://www.domstol.se/amnen/rattshjalp/behavior-du-rattshjalp/har-du-ratt-till-rattshjalp/>.

A guide is also available to help you work out whether or not you are entitled to legal aid on the basis of your financial means. See: <https://www.domstol.se/amnen/rattshjalp/behavior-du-rattshjalp/rakna-ut-ditt-ekonomiska-underlag/>.

## 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' (*målsägandebiträde*) may be appointed in certain cases (see [Act 1988:609 on counsels for the injured party](#)). 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 24 150 (approximately EUR 2 270).

## 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.

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

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

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 or the Swedish Labour Court (*Arbetsdomstolen*)

Investigation costs reasonably incurred in order to safeguard your rights, up to a maximum of SEK 10 000 (approximately EUR 942)

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 (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 (see Section 6 of Chapter 11 of the [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 [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 National Courts Administration at the following address:

##### **National Courts Administration**

SE-551 81 JÖNKÖPING, Sweden

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

Tel.: +46 36 15 53 00

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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 an in 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.

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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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