

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

Where lawyers give advice and represent clients they have a right to remuneration for these services broadly in proportion to the value of the case. Where court proceedings are brought, court costs also arise. Court costs involve more than just fees and expenditure incurred by the court. They also include costs that must be met by a person in need of assistance to perform an act required by the court and the costs incurred for a reasonable prosecution or defence. A person not in need of assistance usually bears these costs. Where the court case is won, the costs are usually refunded by the opposing party.

COSTS OF LEGAL PROCEEDINGS

## 2. What exactly is legal aid?

In Germany a distinction is made between assistance under the Legal Advice Scheme and assistance with court costs. The Legal Advice Scheme Act provides for people on low incomes to receive assistance with the cost of advice and representation **outside** the courtroom. Persons in need receive assistance with the **conduct** of court proceedings under the rules on assistance with court costs.

WHAT IS LEGAL AID?

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

Legal aid (assistance under the Legal Advice Scheme and assistance with court costs) is given when the applicant's personal and economic circumstances are such that he cannot raise the necessary funds and has no other reasonable possibility of obtaining assistance (e.g. legal protection insurance, advice from a tenants' association or trade union).

RIGHT TO LEGAL AID

The intended exercise of rights must be neither wilful nor malicious. For assistance with court costs to be given, the planned prosecution or defence must also have a reasonable chance of success. The court that rules on the application for assistance with court costs must consider, on the basis of the applicant's representation of the facts and the available documentation, that the legal viewpoint is correct or at least justifiable and be convinced that it is possible to present a case. Where these conditions are satisfied, the applicant is entitled to assistance under the Legal Advice Scheme and assistance with court costs.

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

Assistance under the Legal Advice Scheme (advice and, where necessary, representation) is given in civil cases including employment, administrative, constitutional and social cases. In criminal cases and cases involving administrative offences, only advice is given. In cases where the laws of other States must be applied, assistance under the Legal Advice Scheme is given, if there is a German connection. No assistance under the Legal Advice Scheme is granted in connection with tax cases. Assistance with court costs is given for all types of civil cases, cases involving voluntary

TYPES OF PROCEEDINGS

jurisdiction and cases brought before industrial tribunals, administrative courts, social courts and tax courts. No assistance with court costs is given to the accused in criminal court proceedings and debtors in bankruptcy proceedings. The rules on court-appointed defence counsels contain special provisions covering criminal proceedings. In bankruptcy proceedings, debtors are given time to pay the procedural costs.

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

There are no special procedures. The opportunities for obtaining assistance under the Legal Advice Scheme and assistance with court costs are specifically designed to cover cases of need.

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

Forms for applying for assistance under the Legal Advice Scheme and assistance with court costs can be obtained from local courts and lawyers.

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

The necessary details of income must be documented (e.g. pay slips, or most recent tax declaration in the case of self-employed persons).

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

The application for assistance under the Legal Advice Scheme is submitted to the local court, in the district where the applicant is resident (domicile). Where the applicant has no domicile in Germany, responsibility lies with the local court where the need for assistance under the Legal Advice Scheme arises. It is also possible to contact a lawyer directly for assistance under the Legal Advice Scheme. The application must then be submitted to the court afterwards. Applications for assistance with court costs must be submitted to the court where the proceedings in question are being or are to be conducted. The court (not a welfare body) examines the application and decides whether the conditions for giving assistance with court costs are satisfied.

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

Information on assistance under the Legal Advice Scheme and assistance with court costs can be obtained from local courts and lawyers.

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

Where applicants are entitled to assistance under the Legal Advice Scheme and assistance with court costs, they should fill out the appropriate form, attach the necessary documents and hand it in to the office indicated under section 8.

SPECIAL PROCEDURES IN  
CASES OF NEED

APPLICATION FORM

DOCUMENTS TO BE  
SUBMITTED

WHERE TO SUBMIT THE  
APPLICATION?

AM I ENTITLED TO LEGAL  
AID?

WHAT SHOULD I DO IF I AM  
ENTITLED ?

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

The applicant may choose the lawyer from whom to obtain assistance under the Legal Advice Scheme. In Bremen and Hamburg citizens' advice bureaux provide the legal advice. Lawyers are required to give legal advice.

They may refuse to take on a case only where there are serious grounds for doing so. The choice of lawyer is also a matter for the applicant where assistance with court costs is given. Applicants must choose a lawyer authorised to represent them. Only where applicants are unable to find a lawyer prepared to represent them will the presiding judge assign counsel.

WHO CHOOSES MY  
LAWYER?

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

The lawyer providing legal advice is entitled to claim a €10 fee from the applicant, which may be waived depending on the party's circumstances. Other agreements regarding remuneration have no value in law. The lawyer receives the rest of the remuneration from public funds. Where assistance with court costs is given, all the applicant's procedural costs are covered apart from costs not related to the presentation of the case. There are no further costs for the party in need.

DOES LEGAL AID COVER  
ALL COSTS?

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

Where an application for legal aid is justified, the applicant incurs no other costs. All costs arising from the proceedings are covered by the approval of the aid. Where applicants have the financial means to cover part of the costs with part of their income, they are required to pay back the sum in question into public funds in instalments.

WHO BEARS THE OTHER  
COSTS, IF I AM ENTITLED TO  
LIMITED LEGAL AID?

## 14. Does legal aid also cover appeals?

Approval of assistance with court costs does not automatically cover appeals. The cover ends when the final decision concludes the case. However, a fresh application may be made for assistance with court costs to cover appeal proceedings. The appeal court examines whether the party is still in need, whether the appeal is not wilful or malicious and whether it has a chance of success. If these conditions are satisfied, the party is entitled to assistance with court costs to cover the appeal.

DOES LEGAL AID ALSO  
COVER APPEALS?

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

Assistance under the Legal Advice Scheme may be revoked if it has been granted on the basis of false declarations made by the applicant. Assistance with court costs can be revoked only in the following situations:

- ❖ where a false declaration regarding the dispute has given rise to the approval of the aid,

WITHDRAWN LEGAL AID

- ❖ where false information regarding the personal conditions for giving the aid has been given and a declaration not made,
- ❖ where personal or financial circumstances have not been declared,
- ❖ where installment payments are in arrears..

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

A special appeal may be heard against a decision taken by a local court to refuse assistance under the Legal Advice Scheme. Where an application for assistance with court costs has been rejected, the applicant may appeal against the court's decision within one month, if the value in dispute in the main proceedings exceeds €600. Where the value in dispute in the main proceedings does not exceed €600, the appeal is admissible only if the court has rejected the application purely on the grounds of the applicant's personal and financial situation.

## Contact

If you have any further question, please feel free to contact us. Just send an eMail to [info@lawyerslist.Net](mailto:info@lawyerslist.Net).

CAN I CONTEST A REFUSAL  
TO GIVE LEGAL AID?

CONTACT