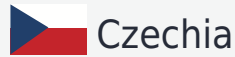


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Legal aid



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European Judicial Network
(in civil and commercial
matters)

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 ; 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.

■ Last update: 12/03/2025

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