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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?

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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