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Portuguese

## Legal aid

### Portugal

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

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

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

Accordingly:

- i. Court fees must be paid by each of the parties involved for the respective legal proceedings to be launched. Court costs are calculated in accordance with the value or complexity of the claim, under the terms of the Portuguese Regulations on Court Costs (*Regulamento das Custas Processuais*) and of the tables appended to those Regulations. Court fees are expressed in 'units of account' (*unidades de conta - UC*), as laid down in Article 5 of the Regulations on Court Costs. Until the end of 2022, the value of 1 (one) unit of account is set at €102.00. This amount may change over time.
- ii. Case-related expenses are those incurred as a result of the court proceedings (such as payments to experts, interpreting services, etc.) when requested by the parties or ordered by the judge – see Article 16 of the Regulations on Court Costs.
- iii. Costs of the parties are the amounts spent by each of the parties in dealing with the court case, a sum which they are repaid if the opposing party loses the case, under the terms of Article 26 of the Regulations on Court Costs (e.g. expenses with fees paid to an attorney; expenses with court-appointed enforcement agents etc.).

Useful links:

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

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

#### 2 What exactly is legal aid?

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

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

- i. legal advice
- ii. legal aid.

Accordingly:

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

Useful link:

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

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

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

- Portuguese citizens;
- citizens of the European Union;
- foreigners and stateless persons who are holders of a valid residency permit in a Member State of the European Union;
- foreigners without valid residency permits in a Member State of the European Union when residency would be attributed to Portuguese citizens in the same situation under the laws of those States;
- non-profit-making organisations are only entitled to legal protection in the form of legal aid.

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

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

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

to all courts, regardless of the type of case;

to Justices of the Peace;

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

to cases run by registry offices;

to inventories being dealt with at notarial offices;

to cases of infringement.

Useful links:

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

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

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

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

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

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

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

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

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

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

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

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

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

[Portuguese Social Security website](#)

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

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

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

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

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

The decision to award legal aid must specify 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 34/2004.

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

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

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

court fees and other case-related expenses;

payment of the fees for legal counsel;

payment of the fees for court-appointed legal counsel;

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

payment of the fees for legal counsel in instalments;

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

cost of the court-appointed enforcement agent;

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

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

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

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

Yes, legal aid remains in place for appeals and covers all subsequent proceedings linked to the case for which legal aid was granted. Legal aid also applies to the main court case, when it is awarded 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 34/2004.

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

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

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

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

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

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