

Instructions leaflet on filling in the form for declaring one's personal and financial circumstances for the purposes of legal aid

- Please keep this leaflet with your case dossier –

General information

Why legal aid?

Litigation in court costs money. Whoever wants to start a court action will normally have to pay court costs for the proceedings. If representation by a lawyer is required by law or if it is necessary for other reasons, the costs resulting from this will have to be paid as well. The same kind of costs will have to be paid by a party defending an action.

Legal aid is meant to enable parties who cannot pay these costs to enforce and defend their rights.

Who gets legal aid?

Here the law says:

„A party who, in the light of his personal and financial circumstances, is unable to bear the costs of litigation, or who is only able to bear such costs in part, or only in instalments, shall, on application being made, be granted legal aid if the proposed legal action or legal defence offers sufficient prospect of success and does not appear vexatious.“

Accordingly, there is a **right to legal aid** for somebody who

- has to conduct litigation but cannot pay the inevitable costs involved **and**,
- in the opinion of the court, does not have only insignificant prospects of winning the case.

There is no entitlement to legal aid if costs are borne by **legal costs insurance** or some **other agency**.

Furthermore, legal aid cannot, for instance, be granted when the spouse, or in the case of an unmarried child, the parents or one of the parents has to pay such costs on the basis of a **legal duty to provide support**.

What is legal aid?

Legal aid means that, depending on a party's personal and financial circumstances, that party will **not** have to make **any payments**, or will have to make **part payments** for court costs and for the costs of **his** representation by a lawyer. If need be, out of his income the party will have to pay **up to a maximum of 48 monthly instalments**, the amount of which is laid down by law.

Legal aid extends to the costs of representation by a lawyer where the court **assigns** a lawyer to the party. A special application has to be made here. The lawyer concerned must be a lawyer **admitted** to practise before the court. If this is not the case, the court may only grant the application for assignment if the lawyer waives remuneration for additional expenses.

If there is a **substantial improvement** in the party's circumstances, that party may, until **4 years** have elapsed **since the end of proceedings in the litigation**, also subsequently be called upon by the court to make payments, possibly to the full extent of court costs and of the costs incurred through his or her representation by a lawyer. If there is a **deterioration** in the party's circumstances, fixed instalments may, for instance, be modified for the benefit of that party.

What risks have to be heeded?

Whoever needs to conduct litigation should first get the most accurate information possible regarding the extent of anticipated court costs **and** costs of representation by a lawyer. This also applies to legal aid. It does not rule out every costs risk.

In particular, legal aid does not cover costs incurred by the opposing party in conducting his or her action, e.g. representation by a lawyer. **If a party loses the case, that party will usually have to reimburse his or her opponent for the latter's costs even though he has been granted legal aid.** There is an exception to this under **labour jurisdiction**: here the losing party at first instance is not required to reimburse his opponent's costs incurred through representation during the litigation. Costs for representation by a lawyer are already incurred in proceedings concerning legal aid itself. They have to be paid by the party whose application for legal aid is not granted. The same applies to court costs that have already been incurred and are still being incurred.

How to get legal aid?

An **application** must be submitted. There must be a detailed and full description of the dispute in the application. "Sufficient prospect of success" (see above), as required by law, must be conclusively apparent to the court from this application. **Evidence** must be specified. If necessary, you should take the advice of your lawyer with respect to these questions. When doing so, also ask your lawyer to inform you about the **Legal Advice Act**, by virtue of which persons on a low income and with assets of little value can claim legal advice and representation out of court free of charge or for a substantially reduced fee.

A declaration of the applicant's personal and financial circumstances (family circumstances, profession or occupation, assets, income and expenditure) as well as the relevant **supporting documentary evidence** must also be attached to the application. **The available form must be used for making this declaration.** Legal aid can be granted only in respect of the period **following submission** of an application in full including this declaration and all necessary supporting documentary evidence.

When the court grants legal aid it is disposing of funds that have been raised from the general public through taxation. The court therefore has to examine whether there is an entitlement to legal aid. The form is intended to facilitate this examination. So it is hoped you will appreciate why you have to give particulars of your personal and financial circumstance.

Read the form carefully and fill it in conscientiously and in full.

You will find instructions for filling in the form below. If you have difficulty when filling it in you can consult your lawyer or the court.

If there is not enough space on the form itself you can use a separate sheet for giving information. Please make a reference in the appropriate box to the separate sheet attached.

Please enclose the **necessary supporting documentary evidence** in its most recent form, number the individual items and enter these numbers in the relevant box provided in the margin.

It supporting documentary evidence is not provided this may lead to **refusal** to grant legal aid, and **incomplete** or **incorrect** information can also lead to **revocation** of legal aid and to subsequent payment of costs incurred in the meantime.

Deliberately incorrect or incomplete statements can lead to a **criminal prosecution**.

Instructions for filling in the form

Please fill in **all parts** of the form **in full**. If your **answer** to a question is "**no**", please put a cross in the relevant box provided. If no box is provided, please write the word "no" or enter a horizontal dash.

- A** Please also specify the **employment** for which you draw an income (Section **E** of the form). You may specify your **personal status** in abbreviated form (s = single; m = married; sd = separated; d = divorced; w = widowed).
- B** If you have **legal costs insurance**, please first find out whether your insurance will cover the costs. **Please always attach the insurance policy to your application.** In case of doubt, ask your insurer or lawyer. If your insurer refuses to pay the costs, please attach the notice of refusal as well. The same applies when the costs are borne by **another agency** or **person** (e.g. third party liability insurance, employer) or when you are entitled to representation in litigation by an organisation (e.g. **tenants association, trade union**) free of charge.
- C** The question must still be answered in the affirmative if the benefits concerned are not granted in the form of periodical payments as support but as **benefits in kind** (e.g. residential accommodation free of charge, board, other forms of support in the parental home; benefits granted by one's partner during cohabitation resembling marital cohabitation). The sum indicating the total of such benefits received must be entered under **E** – "Other income".

If the person under a duty to provide support is your **spouse from whom you are separated** or is **directly related** to you (e.g. father/mother) and your litigation concerns a personal matter (e.g. litigation to obtain support, divorce), the court will need additional information on that person's personal and financial circumstances. Particulars for a spouse from whom you are separated can be given in Sections **E** to **J** of this form. Otherwise please use **another copy** of this form. In the first line under **A** cross out the words "The application for legal aid is being made by" and – depending on the identity of the person supporting you – please indicate the identity of that person in your case by writing "[parents] [father] [mother] of the person applying for legal aid" above the words crossed out. Please get your parent/parents to fill in Section **A** and Sections **D** to **J**, and then sign and attach it to your declaration.

If the person under a duty to provide support refuses to co-operate, please state the reason for such refusal and give particulars of what you know about that person's personal and financial circumstances.

D If you are supporting **relatives** this will be taken into account when legal aid is granted. So it is in your interest to indicate the persons you are supporting, whether your support solely consists of money payments and whether the persons you are supporting have their own incomes. For example, payments made by a third person to support a person who is receiving support from you also form part of that person's income, particularly those payments made by the other parent of a joint child, or remuneration paid to an apprentice or trainee who is a child entitled to support.

E **You must attach the necessary supporting documents as evidence of the information you have given.**

Wages or a salary are particular examples of **income from employment**. State your gross income during the final month before making this application. If you earn less or more than this on a monthly basis, please state your lower or higher average income. Please explain these figures on a separate sheet. Holiday and Christmas bonuses and other non-recurring or irregular income must be indicated separately under "Other income". Please attach the following documents:

1. **a wage or salary statement issued at your place of work for the last twelve months prior to the making of this application;**
2. if available, the **last notice of assessment issued by the Tax Office concerning the annual adjustment of wage or income tax** or else the **certificate of wage tax deductions**, issued at your place of work and **showing your gross and net earnings of the previous year.**

Income from **self-employment**, from **business enterprise** or from **agriculture and forestry** is to be given in respect of a recent month. The same applies to entry of the relevant **operation expenses** as **deductions** under **F**⁴. Please indicate, on a separate sheet, the monthly sums in an **interim statement of account** showing the resulting net profit. Account must be taken of seasonal or other fluctuations in operation results by making reasonable additions or deductions; from these figures you must calculate, pro rata temporise, the monthly sums to be entered on the form for income and operating expenses. If the court so requests, evidence of business income must be provided by submitting the corresponding turnover tax advance returns and of operation expenses by submitting the receipts already obtained for expenses incurred. You must attach your **last annual statement of accounts** and your **last notice of tax assessment showing income earned**.

In respect of income from **letting and leasing** and from **capital assets** (e.g. interest on savings deposits, dividends) please enter **one twelfth of anticipated annual income**.

If you are receiving support payments for yourself and your children, it is only the sum that you are receiving for your own support that has to be entered with the particulars under "Other income". Please enter the sums intended for the children in the last box provided in Section **D**.

Pensions of all kinds, educational and training allowances, sickness benefit, unemployment benefit, unemployment assistance, social welfare assistance and other such benefits are also examples of **other income**.

You must attach the **last notice of the decision to grant benefit** as well as the documents showing the current level of benefit.

Further, the monetary value of **all other income** not covered by the foregoing must be declared here, including benefits in kind as well (e.g. payments in kind particularly in agriculture, forestry or mining, free board, etc.; free residential accommodation only when the costs of residential accommodation are specified under **H**).

F You can claim the following as deductions:

- ① **taxes** paid on income (also church tax, business tax, but not turnover tax);
- ② compulsory **social insurance** contributions (pensions, health, disability, unemployment insurance);
- ③ **public or private insurance** contributions or those made to **similar institutions** so far as such contributions are mandatory by law or are reasonable as regards subject-matter and level; please explain the type and extent of the insurance concerned on a separate sheet if this is not clear from the documents attached (e.g. insurance policy and premium invoice);
- ④ **expenses incurred by the earning of income**, i.e. expenditure necessary for acquiring, securing and sustaining income (e.g. also for clothing worn at work, for trade union contributions). If you claim the costs of **getting to work** you must state the distance in km one way, and if you are using a motor vehicle you must also state the reason why you are not using public transport. If you receive income from self-

employment, please declare your **operating expenses** here; if such expenditure also falls under **F** ①, ② or ③ or under **J** it may only be deducted once.

G **All property assets** belonging to you and your spouse must be declared here (including investments abroad). If one or more third persons are co-owners, please declare the share belonging to you or your spouse.

Legal aid may also be granted where there are property assets which are being used to ensure a reasonable living basis or reasonable future provision. Here are examples of such assets:

- reasonable real estate (family home) that you are using yourself;
- smaller sums of money in cash or equivalent (sums amounting to a total of EUR 2300,00 for the party needing aid plus EUR 256,00 for each person predominantly supported by that party will normally be regarded as a "smaller sum").

Such assets still have to be declared.

Household effects, clothing and items needed in education/training for an occupation or for exercising an occupation only have to be declared if they exceed what is customary or if they are items with a high value.

If you have **real estate** on which a building has been erected, please also state the relevant total area used for residential accommodation purposes or for a business purpose and not only the area used by you and your relatives (see **D** above).

In the final column of this Section the **current market value** (not the assessed value or fire insurance value) of **real estate** must be declared, the current **credit balance** of **building society savings accounts, bank accounts, current accounts, savings accounts** and other similar accounts, **the market price** of **securities** and the **loan value** of a **life insurance policy**.

"**Other property assets**" also include claims and outstanding debts and, in divorce proceedings, particularly the claim to equalisation of the net increase in marital property.

If the use or realisation of some property asset presents a special hardship for you and your family, please give particulars of this on a separate sheet.

H **If costs of residential accommodation** are being claimed, please declare the space used for residential accommodation and the type of heating. Please give a breakdown of these costs as indicated on the form.

Ancillary tenancy costs excluding **heating costs**, which have to be declared separately, are the running costs charged to tenants (real estate tax, drainage, street cleaning, lift, cleaning of the building, shared aerial etc.).

Liabilities for funds borrowed in respect of **residential property** include, in particular, interest and loan repayment instalments on loans/mortgages/charges taken for building, buying or maintaining a family home. Here, too, **ancillary costs** are the running costs excluding heating costs, which have to be declared separately.

If you are sharing residential accommodation with somebody who is not a relative (see **D** above), please enter only the pro rata sums attributable to you.

The necessary supporting documentary evidence (e.g. tenancy agreement, loan deeds, statement of account relating to ancillary costs) **must be attached**.

I The necessary supporting documentary evidence must also be attached in respect of monthly payments and the current level of residual debt if you have entered an obligation to pay for the acquisition of a property asset that has to be declared under **G** or if such obligation has been claimed as a special burden under **J**.

J If you are claiming a **special burden**, please give the monthly sum or pro rata monthly sums to be deducted from your income or from your spouse's income. Along with the documentary evidence please attach an explanation on an extra sheet. A spouse's support burden from a previous marriage can be declared here. High loan repayment instalments may also be deductible as a special burden. It must be made clear in the particulars given under **I** on the form why, since when and until when the obligation to pay instalments applies. You must also state whether you are continuously paying these instalments. You must provide documentary evidence of the actual payments you have made.

K This declaration must be signed by the party himself or by the person who is his statutory representative.