



Federal Ministry
of Justice and
Consumer Protection



Financial aid for legal advice and court costs

Information on the Act on Advisory Assistance (*Beratungshilfegesetz*)
and the provisions on legal aid in the Code of Civil Procedure
(*Zivilprozessordnung*)



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Foreword

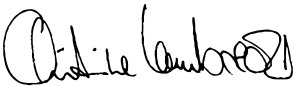


The law applies equally to all individuals. That is why it must be accessible to everyone. No one should have to give up their rights due to financial hardship. Citizens must be able to exercise their rights and assert them in court if necessary.

The **Act on Advisory Assistance** ensures that those with low incomes can receive legal advice and representation outside of court proceedings for a small sum of money. If attempts to reach an out-of-court settlement fail and the case has to be decided in court, then help for court costs – legal aid – is also available.

According to the provisions on legal aid in the **Code of Civil Procedure**, the costs for conducting legal proceedings can, if necessary, be fully or partially borne by the State. Hundreds of thousands of people benefit from this aid every year, whether in landlord and tenant disputes, family disputes, housing benefit conflicts or for construction issues.

To ensure that no one goes to court at public expense without a good reason, there are conditions to be met for financial assistance to be granted. This brochure will give you all the information you need.



Christine Lambrecht
Federal Minister of Justice and Consumer Protection



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A photograph showing a close-up of two hands shaking in a firm grip. The hand on the right is wearing a dark suit jacket and a white shirt cuff. The hand on the left is bare. The background is a blurred white car, likely a sedan, with a dark grille visible in the lower portion of the frame. The entire image has a blue tint.

Financial aid for legal advice
("advisory assistance")

EXAMPLE

Using his savings from the past few years (plus a little extra from his grandmother) Mr Jolly fulfils a long-awaited dream and buys an “almost new” car for himself and his family for € 6,000.

But after just a few miles...

The engine fails. As it turns out, the car was not “almost new” at all. Instead of the 30,000 miles shown on the counter, the car had already been driven 130,000 miles.

Mr Jolly feels as though he was misled. Mr O’Shady, the man who sold him the car, explicitly confirmed the low mileage when asked about it during negotiations. Mr Jolly wants to return the car and get his money back. Mr O’Shady refuses. He claims that he, too, was unaware of the car’s true mileage because he also bought it second-hand and hardly used it. He adds that he is a private seller, not an expert. “We didn’t even talk about the mileage during the negotiations,” he says. He says he won’t take the car back under any circumstances.

You should only seek legal advice or go to court when you have exhausted all other options! Try talking to one another first to try to find a compromise. In most cases, your opponent will not be half as malicious as he or she might seem.

You should also look into out-of-court arbitration offers (for example at the chambers of commerce). There are, for instance, independent arbitration bodies in the fields of radio and television engineering, the cleaning business, the automotive industry and for used car purchases from a dealer.

Mr Honest, Mr Jolly’s work colleague, also went along to look at the car and was present when the sale was negotiated. When he finds out about Mr Jolly’s conversation with Mr O’Shady, he is outraged. He advises Mr Jolly to speak to a lawyer. Mr Jolly dismisses the idea: “I really can’t afford a lawyer right now—my fridge broke yesterday, too.”

Mr Honest takes him aside and says: “Haven’t you heard of the Act on Advisory Assistance? You can get financial help if you don’t have the money for a lawyer. Your wife doesn’t work outside the house, and you have two young children. Due to your low income, you could probably get legal advice for next to nothing.” This is news to Mr Jolly, who asks his colleague to explain everything in detail.

What is advisory assistance?

Advisory assistance (*Beratungshilfe*) means that you can receive expert legal advice at a very low cost. If advice alone is not enough and you need more help and support to assert or defend your rights against third parties, then advisory assistance can also include lawyer's fees for representation. The lawyer or adviser whom you contact for advisory assistance will then act for you against third parties. For example, he or she might write a letter stating the facts of the case and your legal position.

Who can receive advisory assistance?

Advisory assistance can be obtained by anyone whose financial situation would make them eligible, according to the provisions of the Civil Procedure Code, to receive legal aid for court costs (*Prozesskostenhilfe*) without having to pay instalments from their monthly income or using their assets. More detailed information can be found beginning on page 15 of this brochure. Non-German citizens are also eligible for advisory assistance.

In which circumstances is advisory assistance available?

Advisory assistance can be granted for **all legal matters**. This includes the following areas:

- **Civil law**
(e.g. sales law, landlord and tenant cases, claims for damages, road accidents, neighbourly disputes, divorce and maintenance cases, other family matters, inheritance disputes, insurance claims);
- **Labour law**
(e.g. termination of labour contracts);
- **Administrative law**
(e.g. Federal Training Assistance Act (BAFöG), tax law, school and university law, trade law);
- **Social law**
(e.g. "Hartz IV" basic income for job seekers, statutory insurance for health, pensions and accidents);
- **Tax law**
(e.g. matters related to child benefits under the Income Tax Act);
- **Constitutional law**
(e.g. constitutional complaints due to violations of basic rights).

For matters involving foreign law, advisory assistance is only available if the facts of the case relate to Germany.

For claims made within the European Union against a person living in a different EU Member State, the following applies: Advisory assistance can be granted for pre-trial legal advice with a view to an out-of-court settlement or in order to support motions for cross-border legal aid (see page 25).

While it is possible to get advice in criminal matters through the advisory assistance scheme, it is not possible to obtain legal representation or defence. This is because there are special provisions in the Code of Criminal Procedure for representation or defence in criminal cases.

Which other conditions must be met?

The application must not be frivolous. The senior judicial officer at the local court will verify whether, in a comparable situation, a person in a better financial position would also decide to seek legal advice or representation at their own expense.

Alternative options for claiming assistance must either be unavailable,

or it must be unreasonable to expect the person seeking legal advice to use them. For example, trade unions and tenants' associations provide advice to their members within their respective fields. This means that, if you are a member of one of these organisations, you must exhaust these possibilities first. Government authorities such as social security offices, job centres and youth welfare offices are also legally required to provide information and advice.

How do I get advisory assistance?

First, go to your local court, explain your problem to the senior judicial officer responsible for advisory assistance, and state your personal and financial circumstances. The local court can assist you personally by providing immediate information or by referring you to other options. If this is not possible, it will issue a certificate entitling you to advisory assistance. Once you have this certificate, you can look for someone to advise you. All lawyers, as well as non-lawyer legal advisers organised in a professional chamber (*Rechtsbeistände*), are authorised to provide advisory assistance. Tax consultants, auditors and certified accountants can also provide advice on tax law, while pension advisers can give advice on

pension-related matters. You are free to choose your own adviser.

You can also approach an adviser in person, explain your personal and financial circumstances, and request advisory assistance from them. Your written application for advisory assistance can then be submitted to the local court at a later date. However, this must take place a maximum of four weeks after advisory assistance has been provided or the application will not be approved.

Advisers are obliged to provide you with advisory assistance. Your application can only be rejected if there is an important reason.

Which information must I provide in the application?

The information you need to provide is shown on the application form. For example, you must provide true and complete information about your identity, your income situation (including any persons you support), your personal assets, living costs, maintenance payments for legal dependants, and any other particular burdens (e.g. due to physical disability; large payment obligations).

Make sure to take proof of income when you go to the local court or visit an adviser for the first time. This might include payslips, notices of social welfare or unemployment benefit II, tenancy agreements, and/or other documents.

Application forms for advisory assistance are available at the local court or on the internet. In most cases, they are also available from the advisers themselves.

What can I do if my application for advisory assistance is denied?

You can lodge an objection in the form of a reminder ("*Erinnerung*"). You must state, either in writing or on record at the local court, why you do not agree with the decision of the senior judicial officer to reject your application. The senior judicial officer can then remedy the rejection by amending the decision in favour of the person challenging it. Reminders which are not remedied are submitted to the judge for decision.

How much does advisory assistance cost?

Advisory assistance through the local court is free of charge, and the certificate of entitlement is also issued for free. Anyone who receives advice

or representation from a legal adviser has to pay them €15. The adviser can decline the €15 payment if the person seeking help cannot afford it. Generally speaking, an adviser cannot charge anything above this amount. However, the following exceptions apply:

If the advisory assistance is so successful that your financial situation improves considerably as a result—for example, if a debt is repaid, if you receive compensation for damages or inherit money—then the adviser can apply to the local court to withdraw the grant of advisory assistance and demand payment of a previously agreed-upon amount.

However, the adviser must inform you of this at the beginning when they take you on as a client.

If you submit your application after you have received advisory assistance, you may also have to pay more than €15. For example, if the local court denies your application and you have already received advisory assistance, then the adviser can demand regular payment. However, the adviser must inform you of this possibility when they first take you on as a client.

Please also note that advisory assistance does not cover any costs you might

have to pay to a third party. If you make a wrongful demand of a third party and they hire a lawyer to defend themselves, you may be required to pay the resulting lawyer fees of that party.

Finally, you may have to pay money if you don't provide truthful information in your application. If it later becomes clear that you were granted advisory assistance in error, then the local court can withdraw the grant within one year and demand that you repay any money paid to the legal adviser.

What special aspects apply to the city states of Hamburg, Bremen and Berlin?

In the German Länder of Bremen and Hamburg, the existing public legal advice system is still in force. These Länder have different procedures to provide legal advice to low-income people. In Hamburg, legal advice is provided by the public legal information and conciliation office [*Öffentliche Rechtsauskunfts- und Vergleichsstelle (ÖRA)*]. In Bremen it is provided by the chambers of labour [*Arbeiterkammer*].

In Berlin, you can choose between the public legal advice system and the advisory assistance scheme described above.

EXAMPLE

On the same day, Mr Jolly goes to see a lawyer, Ms Helpful, and tells her what has happened so far. She listens carefully and explains the legal situation to Mr Jolly. Together they discuss what to do next.

First possibility


EXAMPLE

Ms Helpful calls Mr O'Shady. He finally agrees to pay back €3,000 to Mr Jolly. As Mr Jolly can use this money to pay for a new engine, he agrees.

Second possibility

EXAMPLE

Ms Helpful calls Mr O'Shady, who rejects all attempts at reaching a compromise. He finally states that the matter will now be settled in court and hangs up the phone. Mr Jolly is aghast because he will now have to pay court costs. But Ms Helpful puts his mind at ease. First of all, she tells him, he might win the case. Mr O'Shady would then have to cover all of the costs. And there is also help available for paying the costs associated with a court proceeding—known as legal aid (Prozesskostenhilfe).

A 3D rendered image of a pair of scissors cutting through a scale of justice. The scissors are positioned vertically, with the blades cutting through the central pivot of the scale. The scale has two pans hanging from a horizontal beam. The background is a solid blue color with a horizontal band of a darker blue shade across the middle. The text is overlaid on this darker band.

Help with court costs
("legal aid")

Who is eligible for help with court costs (“legal aid”)?

Anyone who doesn't have the money to pay the court costs, or can pay them only in part or in instalments, is eligible for legal aid.

The examples on the following pages explain when an individual is fully exempt from paying court costs and lawyer fees, and when instalment payments are required. However, the person who brings the lawsuit (the plaintiff) must use as much of their own money as they can afford. In particular, assets also include an entitlement to an advance payment of litigation costs (e.g. from a spouse in accordance with maintenance law) or a claim to insurance coverage for litigation costs (e.g. from legal expenses insurance).

What are the other requirements for legal aid to be granted?

The intended legal action or defence must have a reasonable chance of success and must not be frivolous.

Which costs are covered by legal aid?

Depending on your available income, legal aid will either completely or partially cover your share of the court costs and the cost of your own lawyer.

However, legal aid does not cover any costs you may have to pay to the opposing party, particularly the cost of the opposing lawyer.

In most cases, therefore, whoever loses the case must cover the costs incurred by the opposing party, even if they have been granted legal aid. Labour court disputes are an exception to this rule. In such cases, the party who loses in the first instance does not have to cover the costs of the opposing lawyer.

Anyone who has no assets and whose available income amounts to less than €20 will be fully exempt from court costs and the cost of their own lawyer. “Available income” is not the same as “net income” and is calculated as follows:

The plaintiff's gross income is taken as a basis for the calculation. This also includes child benefits for those who receive them. Any income of the spouse or registered civil partner (in accordance with the Act on Registered Life Partnerships) is not considered when calculating the income of the plaintiff.

Taxes, provident expenses (e.g. social security, private insurance) and income-related expenses are subtracted from the gross income. The following amounts are also deducted:

- an allowance of €501 for the party (as of 1 January 2020)
 - a further allowance of €501 for their spouse or civil partner (as of January 2020). However, the income of the spouse or registered civil partner (e.g. from gainful employment) is deducted from this allowance.
 - an allowance based on the age of every child entitled to maintenance (as of 1 January 2020)
- a) Adults: €400,
- b) Adolescents from 15 to 18: €381,

c) Children from 7 to 14: €358,

d) Children up to 6: €289,

However, any personal income of those receiving maintenance (e.g. from gainful employment) is deducted from this allowance.

- an additional allowance of €228 (as of 1 January 2020) for the party if they receive income from gainful employment;
- housing costs (rent, ancillary rental costs, heating);
- other potential costs related to special burdens (e.g. physical disability).

The remainder constitutes the available income. This amount determines whether or not legal aid will be granted, and whether or not it must be paid in instalments.

These allowances are subject to change based on the standard rates for the granting of social welfare. The latest amounts are published in the Federal Law Gazette whenever the relevant rates are changed.

Your lawyer or local court can inform you of the latest amounts.

EXAMPLE

Mr Jolly is married with two children who are both eligible to receive maintenance (ages 7 and 3). He has a total net income of €1,800 per month after deductions for tax, provident expenses and income-related expenses. He also receives an additional €408 in child benefits (€204 per child, as of 1 July 2019). From this, allowances are deducted for him (€501), his wife (another €501) and their two children (€358 + €289 = €647), as well as an additional allowance for his gainful employment (€228) and housing costs including heating (€600).

This comes to a total of €2,477, which is then subtracted from his net income of €2,208.

No available income remains. Furthermore, Mr Jolly does not have any assets which he could use to help pay for his legal costs. He is therefore eligible to receive legal aid without an obligation to pay in instalments.

Litigants with an available income of at least €20 have the right to pay their legal costs in monthly instalments amounting to half of their available income.

A maximum of 48 monthly instalments are permitted, irrespective of the number of court instances. Any additional costs are waived.

EXAMPLE

If Mr and Mrs Jolly each earn €1,400 per month after tax, then Mrs Jolly's income will be deducted from her allowance of €501. As Mrs Jolly's income is greater than her allowance, the allowance is not considered when calculating Mr Jolly's available income.

As a result, only Mr Jolly's own allowance (€501) and the allowance for his two children (€358 + €289 = €647) are deducted from his net income, as well as the additional allowance for his gainful employment (€228).

However, only a proportion of the housing costs (€600 including heating) can be deducted, as these costs are borne jointly by Mr Jolly and his wife. Mr Jolly's proportion of the allowance is €300. In total, the deductions amount to €1,676. If this amount is subtracted from Mr Jolly's monthly net income (€1,400 + €408 in child benefits = €1,808), then an available income of €132 remains.

As Mr Jolly does not have any additional assets he can use to pay his legal costs,

his monthly rate amounts to €66. These instalments must be paid until the legal costs are covered, but cannot exceed 48 monthly instalments.

What do I have to do to receive legal aid?

In order to receive legal aid, you must submit an application to the trial court stating the facts of the case and the relevant evidence. You must also enclose a declaration of your personal and financial circumstances, including copies of the relevant documents as

proof.

To declare your personal and financial circumstances, there is a form you must fill out carefully and completely.

Please note that, for appeals which must be lodged before a certain deadline (e.g. appeals on points of fact and law (*Berufung*) or appeals on points of law only (*Revision*)), the declaration must also be submitted before this deadline.

When can I hire a lawyer?



A lawyer to represent you will be appointed if:

- legal representation is required by law e.g. in divorce cases at the Family Court (Local Court) or in proceedings before the Regional Court, Higher Regional Court or Federal Court of Justice;
- legal representation appears necessary, or if the opposing party has legal representation and you apply for a lawyer to be appointed.

What happens if my personal and financial circumstances change?

If your financial circumstances change for the worse, you can contact the court and ask for any problematic arrangements to be changed. The court can then either reduce the instalments or determine that instalments no longer need to be paid. If your financial situation improves significantly, the court can order you to pay instalments (or increase your existing instalments), or order you to use your existing assets to cover your legal expenses. It should be noted that, during court proceedings and for up to four years after they have ended, you are obliged to inform the court immediately and on your

own initiative of any significant improvements to your financial circumstances, or of any change of address.

Any consistent improvement to your current income of more than €100 (gross) per month must also be declared. If housing costs, payment obligations or other financial burdens decrease by over €100 per month or cease to exist, this information must also be declared voluntarily. If these obligations are violated, approval for legal aid may be revoked retroactively. Any costs would then have to be repaid in full.

EXAMPLE

Ms Helpful calculates how much the trial (at first instance) is likely to cost. She takes the amount in dispute as the basis for her calculation (i.e. the car's purchase price of €6,000) and, as a precaution, also takes into account the cost of taking evidence.

She arrives at a figure of around €3,349.

Example calculation	
Amount in dispute: €6,000	Cost
Court fees	approx. €495
Cost of own lawyer	approx. €1,077
Cost of opposing lawyer	approx. €1,077
Cost of two witnesses, for example	€90
Expert report, for example	€600
Ancillary costs	approx. €10
Total	€3,349

Should the case go to appeal, the total cost could rise to over €6,300.

Due to the value of the matter in dispute, the Regional Court is responsible for the case. This means that legal representation is required by law.

Mr Jolly has a net income of €1,800. After all applicable deductions (see the first example on page 17), no available income remains.

As a result, he does not have to pay anything towards the court costs or the cost of his own lawyer.

If Mr Jolly were to lose the case after being granted legal aid, he would only have to cover the cost of the opposing lawyer (in this case, around €1,077).

Mr Jolly discusses the matter with his wife; they decide to take the risk and go to trial. The next day, Mr Jolly goes back to his lawyer. The lawyer applies to the competent regional court for legal aid, nominates herself as the appointed lawyer and attaches a draft complaint.

The court grants Mr Jolly legal aid and appoints Ms Helpful as his lawyer. The case then goes to trial and the court decides in his favour after Mr Honest testifies and confirms Mr Jolly's statement about what happened during the sales negotiations. Mr O'Shady cannot base his defence on the claim that he was unaware of the car's mileage, as he explicitly confirmed during the negotiations that the figure shown on the mileage counter was correct. He has to stand by that statement.



What happens if there is a legal dispute and one of the parties lives in a different EU Member State?

If the plaintiff or the defendant are residents of different EU Member States, then the decision on whether or not to grant legal aid will be made according to the law of the country in which the court ruling on the case is located. However, litigants are supported by the transmitting agency in the Federal Republic of Germany, i.e. the competent local court. The court arranges for the applications and (if necessary) the supporting documents to be translated. It makes sure that the information is complete and forwards the application to the competent receiving agency in the country where the trial court is located.

These services are usually provided for free. However, the applicant must repay these expenses (particularly the translation costs) if he withdraws the application at a later date, if the application is rejected for forwarding by the transmitting agency, or if the request for legal aid is rejected by the receiving agency.

EXAMPLE

Mr Jolly purchases a car in Poland. Just like the case described above, he can now apply for advisory assistance to hire a lawyer (Ms Helpful) with a view to an out-of-court settlement.

If no out-of-court settlement can be reached, he can apply for legal aid. If a Polish court were deciding on the case, Mr Jolly would have to fill out a special application form for legal aid, as well as a form for transmitting his legal aid application.

These forms are available from German local courts. They are also available online at the following address:

**[https://e-justice.europa.eu/
content_legal_aid_forms-157-de.do](https://e-justice.europa.eu/content_legal_aid_forms-157-de.do)**

The costs arising because the lawyer, Ms Helpful, helped Mr Jolly to fill out these forms are still covered by the previously granted advisory assistance.

The completed forms must be submitted to the competent local court, which will arrange for them to be translated if necessary. The documents will then be forwarded to the body in Poland which is responsible for granting legal aid. If Mr Jolly is not granted legal aid because he has too much available income due to the lower cost of living in Poland compared to Germany, he can obtain a certificate from the local court in Germany proving that he would be eligible for legal aid by German standards.

Once a decision has been made in Poland on whether or not to grant him legal aid, the trial there can begin.

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