

# NON AUTHORIZED TRANSLATION

## Information on the form for the declaration of personal and economic circumstances when applying for legal aid or procedural costs assistance

– Please retain this information sheet and a copy of the completed form for your records –

### General remarks

#### What is legal aid or procedural costs assistance for?

If you lodge an action or wish to make an application to a court, you have to pay court costs as a rule. If the law prescribes that you be represented by a lawyer, or if representation by a lawyer is necessary for other reasons, this constitutes an additional cost. You also similarly incur costs when you defend yourself in court proceedings.

Legal aid or procedural costs assistance is intended to enable you to pursue or defend your rights if you are unable to meet these costs or can only meet them in part. It can also be approved if you need to pursue compulsory execution in order to enforce a claim.

#### Who receives legal aid or procedural costs assistance?

The Act on Legal Aid (*Gesetz für die Prozesskostenhilfe*) prescribes the following on this matter:

“A party who according to his/her personal and economic circumstances is unable to pay the costs of the proceedings, or only in part or only in instalments, shall receive legal aid on application if the intended pursuance of rights or intended defence of rights has sufficient prospects for success and does not appear to be frivolous.

The pursuance of rights or defence of rights is deemed to be frivolous if a party which does not claim legal aid would refrain from the pursuance of rights or the defence of rights were all the circumstances to be sensibly weighed up although there are sufficient prospects for success.”

This also applies to procedural costs assistance. You are therefore entitled if you

- need to pursue proceedings and are unable or only partly able to afford the necessary costs, **and**
- in the assessment of the court do not have only slight prospects for success, **and**
- would not refrain from pursuing the proceedings if you had to pay the costs yourself.

There is however **no** entitlement to legal aid or procedural costs assistance if **legal protection insurance** or **another body** would assume the costs. It is also not granted if someone else is obliged to meet the costs because of a statutory maintenance obligation (advance on legal or procedural costs). This may be the spouse/civil partner or with an unmarried child the parent or parents.

#### What is legal aid or procedural costs assistance?

Legal aid or procedural costs assistance is a state welfare benefit and is part of the administration of justice. If you receive legal aid or procedural costs assistance, you do not have to pay, or only pay a part of, the court costs and the costs of your own representation by a lawyer depending on your personal and economic circumstances. You may have to pay a maximum of up to 48 monthly instalments from your income. The amount of these monthly instalments is set by law.

The cost of your representation by a lawyer is paid if the court assigns you a lawyer or other persons who may be assigned in this way. This must be applied for separately. The lawyer must always be established in the district in which the court is located. Otherwise, the court may only comply with the assignment application if no further costs are incurred.

If your circumstances improve considerably, you can also be retroactively charged with payments until expiry of four years from the final ruling or other termination of the proceedings. If your circumstances worsen, it is also possible to reduce instalments which have been set.

**Important:**

**During the court proceedings and within a period of four years from the time of the final ruling or other termination of the proceedings, you are obliged to inform the court of any major improvements in your economic circumstances or of a change of address promptly and without being requested to do so. With regard to regular income, every improvement of more than 100 Euro (gross) per month is to be notified if it is not only a lump sum. If deductions which have been asserted are reduced (housing costs, maintenance payment obligations or special burdens), or if they cease altogether, you also have to take the initiative to notify them if the reduction in the burden occurs more than once and is more than 100 Euro per month. A major improvement in the economic circumstances may also occur by virtue of you obtaining something as a result of the assertion or defence of rights. You also need to inform the court of this. If you breach these obligations, approval may be retroactively rescinded, and you will have to subsequently pay the costs.**

## **What risks need to be considered?**

If you need to go to court, you should start by obtaining as precise information as possible on the amount of the court **and** lawyers' costs to be expected. This also applies in the case of legal aid or procedural costs assistance which **does not rule out all cost risks**.

In particular, it does not cover the costs which the opposing side incurs for its representation by a lawyer. **If you lose the court case, as a rule you have to refund the opposing side's costs even if you have been granted legal aid or procedural costs assistance.** An exception applies in the labour courts, where, **at first instance**, the costs of the opposing side's representation do not need to be refunded if you lose.

Costs are already incurred for representation by a lawyer in the legal aid or procedural costs assistance proceedings. You have to pay these if your application is rejected. The same applies to court costs which have already been incurred and those which are still to be incurred.

## **How to obtain legal aid or procedural costs assistance?**

An **application** must be made in which you describe the dispute in detail and in full. The application must conclusively reveal the "sufficient prospects for success" to the court as required by the law (see above). The **evidence** must be quoted. You should consult legal advice on these questions if necessary. You should also enquire about the **Legal Advice Aid Act** (*Beratungshilfegesetz*), in accordance with which persons on a low income and who have few assets can claim free or much cheaper legal advice and out-of-court representation.

You also have to enclose with the application a **declaration of your personal and economic circumstances** (family circumstances, occupation, assets, income and burdens), as well as **copies of appropriate documents. You have to use this form for this declaration.** Legal aid or procedural costs assistance can as a matter of principle only be approved for the time after the complete application has been submitted, including this declaration and all necessary documents. The form is to be completed separately by each applicant. With under-age applicants, their personal and economic circumstances, as well as those of the persons obliged to provide them with maintenance, are to be stated on additional copies of the form.

The court decides whether you are to be granted legal aid or procedural costs assistance. Since the funds available for legal aid or procedural costs assistance are provided by the public through taxes, the court must examine whether you are entitled to legal aid or procedural costs assistance. The form is intended to make this examination easier. Please therefore understand that you must reveal your personal and economic circumstances.

### **Read this form carefully and complete it conscientiously.**

You will find the information for completing the form below. If you have difficulty completing the form, you can consult legal advice or approach the court. If there is insufficient space on the form, you can provide the information on an additional sheet. Please indicate the additional sheet in the appropriate box.

**Important:**

**The court may ask you to submit documents which are missing and to affirm your information in the form of an affidavit. If you do not provide subsequent documents that are requested, this may cause your legal aid or procedural costs assistance application to be rejected.**

**If you provide incomplete or incorrect information, this may cause legal aid or procedural costs assistance that has already been granted to be withdrawn, and you may have to subsequently pay the costs which have been incurred. This may also happen if, during the court proceedings and within a period of four years from the final ruling or other termination of the proceedings, you do not inform the court of major improvements in your economic situation or of a change in your address promptly and without being called on to do so. If you deliberately make incorrect or incomplete statements, this may also be prosecuted as a criminal offence.**

## Information on completion

Please complete **all parts** of the form **in their entirety**. Should you wish to answer **no** to any of the questions, please enter a cross in the relevant box. Please enclose **copies** of the latest versions of the **necessary documents**, number them and enter the numbers in the box provided for them in the margin.

**A** Please describe the **gainful employment** from which you derive your income (Part E of the form).

**B** If you have **legal protection insurance**, you must approach the insurance company first. **Please always enclose a copy of the insurance policy document**. If your insurance company has already refused to meet the costs, please also enclose a copy of the rejection letter. If you are a member of an organisation which customarily grants legal protection to members for legal disputes such as yours (e.g. **trade union, tenants' association or social associations**), you must also approach this organisation as a matter of priority. Approval of legal aid or procedural costs assistance cannot be considered as a rule until the organisation has refused to grant you legal protection. If you need to complete the form after legal aid or procedural costs assistance has been granted in order to examine your personal and economic circumstances, you do not need to provide any further information here.

**C** **Statutory maintenance obligations** as a matter of principle exist between direct relatives (that is for instance for parents towards their children and vice versa), between spouses, between civil partners and between an unmarried mother and the child's father after the birth of a child. A maintenance claim is furthermore contingent on

- the party entitled to maintenance being unable to maintain him/herself, and
- the party obliged to provide maintenance being economically able to provide maintenance, taking his/her other obligations into account.

Adult children hence generally also have a legal maintenance claim against their parents as long as they remain at **school or in vocational training** or are studying. The court requires **additional information** on the personal and economic circumstances of the parties obliged to provide maintenance. The information can be provided for spouses (including if they are separated) and for civil partners in Parts E to J of this form. In other cases, please use **another copy** of this form, but only complete Parts A as well as D to J. If the party obliged to provide maintenance refuses to cooperate, please state the reason for the refusal and what you know about their personal and economic circumstances.

**D** If you give maintenance to **relatives**, this is considered when approving legal aid or procedural costs assistance. It is therefore in your interest to state to which persons you are providing maintenance, regardless of whether you are providing maintenance exclusively via monetary payments and whether the persons have income of their own. The own income of a person to whom you give maintenance also includes maintenance payments from a third party, in particular those from the other parent for the joint child, or a training allowance which is paid to a child who is entitled to maintenance. **You must enclose copies of the necessary documents with the information (e.g. maintenance title, proof of payment)**.

**E** **Income from employment** is in particular wages or salary. You should state the gross income of the last month before lodging the application. Please state holiday or Christmas bonuses and other items of lump-sum or irregular income separately at "other income". Copies of the following should be enclosed:

1. **wage or salary slips from the workplace for the past twelve months prior to lodging the application;**
2. if available, the **latest income tax notice from the tax office**, otherwise the electronic **wage tax certificate revealing the gross and net income of the previous year**.

Income from **freelance work, trade or agriculture and forestry** is to be stated with a current monthly amount. The same applies to entering the appropriate **operational expenditure** as a deduction in Part F. Please list the monthly amounts on an additional sheet using an interim financial statement with the resulting net profit. Seasonal fluctuations or other fluctuations in the operating result should be accounted for by appropriate additions or deductions. Please enter in the form the monthly amounts of the income and of the operational expenditure which you have calculated from this pro rata temporis. If the court so requests, you must prove the operational income with the corresponding rate of turnover tax paid and the operational expenditure with the supporting documents. **Copies of the most recent annual accounts and of the most recent tax notice revealing the income that was realized should be enclosed.**

If you have income from **letting and leasing**, as well as from **capital assets** (e.g. interest on savings or dividends), please enter one-twelfth of the expected annual income.

If you receive **maintenance payments** for yourself and for children, only the amount should be entered in your statement which is intended for your maintenance. Please enter the amounts intended for the children in the penultimate column of Part D. Please also answer Yes to the question on receiving maintenance if the benefit is provided to you not as a maintenance annuity, but as a **material benefit** (such as rent-free accommodation, food, other benefits in your parents' home; benefits from the partner in a consensual union). You should enter the estimated value of these benefits in Part E.

As to **income from** pensions, unemployment benefit, unemployment benefit II, sick pay, parental allowance, training promotion or other social benefits, **copies of the most recent approval notice and of the documents revealing the current amount of the benefits should be enclosed.**

You should furthermore state the monetary value of all other **income** not covered by the previous lines of the form, including material benefits (e.g. benefits in kind, free food and other non-cash benefits; rent-free accommodation should however only be stated here if accommodation costs are stated in Part H).

**F** You can claim the following **deductions**:

1. the **tax** paid on the income (including church tax, trade tax, but not turnover tax) and the solidarity levy;
2. obligatory **social insurance** contributions (e.g. pension, health insurance, unemployment and long-term care insurance);
3. contributions to **public or private insurance companies or similar institutions**, but only up to the amount in which these are prescribed by law. If the insurance is not prescribed by law, contributions may only be deducted up to the amount in which the insurance is suitable in terms of its nature and extent. Please explain the nature and extent of the insurance on an additional sheet if this is not evident from the documents copies of which are to be enclosed (e.g. insurance certificate, contribution calculation);
4. **travel and other income-related expenses**, that is the necessary expenditure in order to acquire, secure and maintain income (e.g. also working clothes, trade union subscription). If you claim costs for travel to work, the single distance in kilometres should be stated; if a motor vehicle is used, also state the reason why public transport is not used. If you have income from self-employed work, please state the operational expenditure here.

The general cost of living (e.g. food, clothing, telephone or electricity if not required for heating) is taken into account by the court at its own initiative in the amount of the exemptions set by law.

**G** **All bank accounts, real estate, motor vehicles, amounts of cash, life insurance policies, private pension insurance policies and other assets** (including those located abroad) are to be stated here where they belong to you, to your spouse/civil partner, either solely or jointly. If one or several persons are co-owners, please state the share belonging to you, your spouse/civil partner. Copies of appropriate documents are to be enclosed. Moreover, the court may ask for further documents for a justified reason (for instance bank statements for a longer period in the past).

You may also be granted legal aid or procedural costs assistance if you have assets, but these serve to ensure a suitable livelihood or suitable pension provision. Such assets are for instance

- a commensurate owner-occupied plot of developed land,
- capital serving the purpose of additional old-age pension provision within the meaning of the Income Tax Act (*Einkommenssteuergesetz*) and the accumulation of which was promoted by the state ("Riester pension"),
- a suitable motor vehicle if it is needed for vocational training or to exercise an occupation,
- smaller amounts of cash or monetary values (as per January 2018: amounts up to a total of Euro 5,000 for the party in need of assistance plus Euro 500 for each person largely receiving maintenance from them).

However, you still have to state these assets!

**Household goods, clothing and articles** which are needed for vocational training or to exercise an occupation only need be stated if they exceed usual standards or if they are articles of a higher value.

If you have **developed real estate**, please also state the respective total area used for residential purposes or for a commercial purpose, not only the area used by you and your relatives (Part D above).

With **real estate**, the market value is to be stated (not the basic assessment value or fire insurance value); with **building society accounts, bank accounts, current accounts, savings accounts** and the like the account balance at present, with **securities the quantity, the security number** and the current market price, and with life **insurance policies** the surrender value. Copies of appropriate documents (e.g. certificates from banks or insurance companies) should be enclosed.

“**Other assets**” also include claims, in divorce proceedings in particular also the claim from the equitable division of accrued gains.

If the use or sale of an asset would constitute a particular hardship for you or your relatives, please explain this on an additional sheet.

**H** If **housing expenses** are claimed, please state the living space, the number of rooms and the total number of persons living in the living space. Please break the costs down as provided on the form.

Apart from **heating costs**, which should be stated separately, **ancillary rental costs** are the **operating costs** which are shared among the tenants (e.g. property tax, water supply, waste water disposal, street cleaning, refuse disposal, chimney sweep, lift, common-area electricity, building cleaning, communal antenna, etc.). These do not however include gas or electricity costs for your own home (where these are not heating costs), telephone or television and radio licence fees.

Charges on borrowed funds in an **owner-occupied home** include in particular the instalments for loans which were taken up for building, purchasing or maintenance. Here too, apart from the heating costs, which are to be stated separately, **ancillary costs** also include the operating costs.

If you share the living space with a person other than a relative who is entitled to maintenance (Part D above), please only enter the proportionate amounts applying to you. **Copies of the necessary documents (e.g. tenancy agreement, loan certificates, ancillary cost account) must be enclosed.**

**I** You must also enclose copies of the necessary documents for the monthly payments and the current amount of the remaining debt if you have entered into an obligation to pay in order to acquire an asset to be stated in Part G.

**J** If you claim a **special burden**, please state the monthly amount or the proportionate monthly amounts which are to be deducted from your income or that of your spouse/civil partner. As well as the documents, please also enclose an explanation on an additional sheet. A maintenance burden of your spouse/civil partner from a previous marriage or partnership can be stated here. If you are in a special situation and hence the prerequisites for granting additional needs in accordance with section 21 of Book II of the Social Code (*SGB II*) or section 30 of Book XII of the Social Code (*SGB XII*) apply, these are also recognised as a deduction. Examples of these are:

- expectant mothers after the 12th week of pregnancy
- persons living together with one or several minor children and who ensure their care and upbringing alone
- persons with a disability to whom specific benefits are granted in accordance with Book XII of the Social Code (*SGB XII*)
- persons who require costly food for medical reasons.

**K** The declaration should be signed on the bottom line by the party him/herself, even if represented by a lawyer. In case of legal representation, the legal representative must sign.