

Annex 1

Information sheet on the application for advisory assistance

General information

What is advisory assistance?

Citizens with low income can receive advisory assistance (*Beratungshilfe*) in order to obtain legal advice and, if necessary, legal representation. Advisory assistance can be provided for all areas of law. You can find further information by contacting the courts, lawyers or the other consultants.

Who can receive advisory assistance? What are the requirements?

Advisory assistance is available to anyone whose personal and financial circumstances are such that they **lack the necessary means** to obtain legal advice or representation. This generally refers to people who currently receive welfare benefits according to Book Twelve of the Social Code (*Sozialhilfe*). However, other people on low incomes may also be eligible. More detailed information can be obtained from the local courts (*Amtsgerichte*) and the consultants.

In order to obtain advisory assistance, you **must not have any other way of receiving free advice and/or representation** with respect to the matter you have specified in the application (for example, through membership of a trade union or a tenants' association, or through legal expenses insurance). You must **not have already been granted advisory assistance** or been denied it by the court with respect to the **same legal matter**. Whether or not the matter is the same may have to be determined on a case-by-case basis.

Since advisory assistance is provided in order to exercise one's rights outside of court proceedings, **there must be no pending court proceedings** concerning the same matter. This also includes dispute resolution proceedings before a conciliation body, which in some *Länder* have to be conducted before an action is brought (obligatory conciliation proceedings under section 15a of the Introductory Act for the Code of Civil Procedure – *Gesetz betreffend die Einführung der Zivilprozessordnung*). Anyone wishing to be represented in court proceedings can receive legal aid to cover their procedural costs.

A further requirement is that the intended use of the advisory assistance must not be frivolous. It is **considered not frivolous** if you would still seek legal advice even at your own cost.

To obtain advisory assistance, you must make an **application** either orally or in writing. For written applications, please use the form in the Annex. You can either submit the application at your local court, or you can contact one of the consultants listed below and request advisory assistance directly. **In these cases, the local court must have received the application within 4 weeks of you starting to receive advice. Otherwise the application for advisory assistance will be rejected.**

If the prerequisites for the provision of advisory assistance have been met, the local court will issue you with a **certificate of eligibility to obtain advisory assistance** from a consultant of your choosing – provided that the court does not provide the advice itself. Should the local court reject your application, you have the legal option of submitting a reminder (*Erinnerung*). There is no time limit for doing this. This means you can make a written statement to the

court explaining why you do not agree with the decision.

Who provides advisory assistance?

Advisory assistance is provided by **consultants** (lawyers and legal counsels who are members of a bar association; tax consultants and auditors in tax-related matters; and pension consultants in pension-related matters). Advisory assistance is also provided in special **legal advice centres** which have been established on the basis of an agreement with the *Land* judicial authorities. Apart from in certain exceptional cases, all of them are obliged to provide advisory assistance.

The **local court** may also provide advisory assistance directly. It may provide immediate information insofar as this can appropriately deal with your concerns. The local court may also refer you to other possibilities for assistance. It will also accept your declaration or your application for advisory assistance and issue a certificate of eligibility where appropriate.

What does advisory assistance cost?

Where advisory assistance is provided not by the local court but by a consultant, you must pay this consultant 15 euros. The consultant may waive this fee. As a rule, all other costs of the advisory assistance are covered by the *Land* treasury.

You may be charged **additional fees** if the local court **rejects** your application for advisory assistance **after you have already received advice**, or if the granting of advisory assistance is **revoked**. In these cases, you will have to bear the costs of the advisory assistance yourself. Further information can be obtained from the local courts and the consultants.

Additional costs may also be incurred if you obtain something through the advice you received via advisory assistance. The consultant can then apply to have the advisory assistance revoked and demand payment of the fees previously agreed with you for that case. However, the consultant must **inform** you of this possibility in writing upon accepting the case.

Things to note when submitting an application

Please read the application form carefully and fill it out conscientiously. You can find information to help you answer the questions on the next page. If you have problems filling out the form, the local court or your consultant can help you.

If there is not enough space on the application form, you can also provide information on a separate sheet of paper. Please make reference to the enclosed sheet in the relevant box on the form.

Since the funding for advisory assistance is generated by the general public in the form of taxes, the court must verify whether you are entitled to receive it. The form is designed to simplify this process. We therefore ask for your understanding that you will have state your personal and financial circumstances.

Important:

Please enclose copies of all necessary supporting documents (particularly those relating to your income, assets and expenses). This will save you having to answer further questions that will delay the process. Please answer truthfully and completely,

otherwise previously granted advisory assistance may be revoked and you will have to pay back the costs incurred.

The court may also ask you to subsequently submit any missing documents and to declare in lieu of an oath that the information you have provided is correct. Failure to provide the requested documents may cause your application for advisory assistance to be rejected. If you deliberately provide false or incomplete information, you may also face criminal prosecution.

Instructions for completing the form

A

Please state what happened and why you wish to receive advice. Briefly describe the **facts of the case** and state the name and address of the opposing party where applicable.

B

Legal expenses insurance: If you have legal expenses insurance, please contact your insurance provider to check whether they will cover the costs. Advisory assistance can only be granted once this has been clarified (please enclose the letter from your provider of legal expenses insurance where applicable).

Other possibilities for advice/representation: Organisations such as tenants' associations or trade unions generally provide free advice and representation to their members. If this applies to you, you will not generally be entitled to advisory assistance. If you do not consider this option to be sufficient, please state the reasons why on a separate sheet.

Previously granted advisory assistance: If you have already been granted advisory assistance for the same matter at an earlier point in time, your application will be rejected. If you are unsure whether the matter in question is the same as the one for which you have already been granted advisory assistance, please state on a separate sheet the date on which the previous assistance was granted, the name and address of the consultant and the reasons why you are applying for advisory assistance again.

Pending court proceedings: Advisory assistance can only be granted if no court proceedings have been or are currently being conducted concerning the same matter. You must expressly confirm this. If there are any doubts regarding pending or completed court proceedings, please indicate the competent court and the relevant case number on a separate sheet, and briefly state the reasons why the current legal matter is different.

C

For your **gross income**, please indicate your entire income in money or money's worth, in particular:

- Wage, salary (including Christmas bonus and holiday pay), unemployment benefit, income from self-employment, pensions
- Income from renting or leasing, income from capital assets
- Maintenance payments

- Child benefit, housing benefit, educational support grants

Your **net income** is the amount available after the deduction of all necessary payments, in particular:

- Taxes payable on your income
- Compulsory social insurance contributions (pension, health, long-term care and unemployment insurance)
- Contributions to other insurances, such as a “Riester” retirement plan (please specify on a separate sheet)
- Income-related expenses (necessary expenditure for acquiring, securing and maintaining income, e.g. work clothes, union dues, costs for travel to work).

As a rule, the information you provide should be based on the month prior to submission of the application. However, if you are self-employed or your income is irregular, you should state one twelfth of your expected annual income. You must also declare the income of a spouse or registered partner, as he or she may under certain circumstances have to pay the costs for the consultation if he or she is obliged to pay maintenance in important and urgent matters.

Please enclose supporting documents for all of the information you provide, such as wage/salary statements, a grant notification in accordance with the Second Book of the Social Code (including the calculation sheet) or, if you are self-employed, your most recent tax assessment.

D

Your **accommodation costs** will be taken into account as long as they are not conspicuously disproportionate to your living conditions. For monthly living costs in a rented apartment, please specify your monthly rent as well as heating and ancillary costs (these are the operating costs apportioned to the tenant). However, energy costs (other than heating costs) and telephone costs do not fall under housing costs. In the case of home ownership, please indicate the interest and repayment rates for loans / mortgages / land charges plus heating and operating costs.

E

It is in your interest to specify any persons to whom you **provide maintenance** and whether they have their own income. This is because maintenance payment is taken into account if you are legally required to pay it. If the maintenance you provide is not exclusively in the form of payment (e.g. where a child not only receives payments from you but also lives with you and is cared for by you either all or some of the time), please leave this column blank. In such cases, a statutory maintenance allowance will be determined for each relative.

F

First, please indicate all bank accounts held by you and your spouse / registered partner and whether they are joint or shared accounts. This information is required even if the account is overdrawn, as the account balances may be offset against other assets. Advisory assistance can still be granted if you have **assets**, provided these serve to secure an adequate livelihood or adequate retirement provisions. Such assets include:

- An adequate owner-occupied property (family home)
- An adequate vehicle used by you or your family, provided this is required for vocational training or in order to exercise a profession

- Smaller cash amounts or monetary values (amounts up to a total of 2600 euros for you personally, plus 256 euros for each person to whom you provide maintenance, are usually considered “smaller amounts”)
- Household goods and clothing, as well as items needed for vocational training or in order to exercise a profession (you only have to declare these if they are unusual or valuable)
- The amount you have saved as part of a “Riester” retirement plan.

If using up another asset would cause hardship for you and your family, please explain this on a separate sheet.

G

Payment obligations and other **special financial burdens** can be taken into account where appropriate. **Payment obligations** particularly include loan instalments, provided they are actually being repaid. Other examples of **special financial burdens** include additional medical treatment costs, costs for extracurricular learning support, BAföG loan rates or additional expenditure for a disabled relative. A maintenance obligation on the part of your spouse or registered partner from his or her previous marriage or registered partnership can also be indicated here. Please enclose proof of the payment obligation or other financial burden, as well as proof of the actual payments you make and the remaining debt (e.g. copy of the credit agreement, copies of bank statements, etc.).

If you receive benefits according to the Second or Twelfth Book of the Social Code (*Sozialgesetzbuch*, SGB) and have special personal circumstances, the **additional needs** you are recognised as having under section 21 SGB II or section 30 SGB XII will also be taken into account as a special burden. Examples of this include:

- Being recognised as disability code “G” and reaching the age limit / full reduction in ability to work
- Expectant mothers after their 12th week of pregnancy
- Single parents living with one or more minors
- Disabled persons who are granted certain benefits according to the Twelfth Book of the Social Code
- People who require an expensive diet for medical reasons
- Decentralised hot water supply
- Unavoidable ongoing additional expenditure.

Where applicable, please indicate the additional needs you are recognised as having due to your special personal circumstances. Details regarding payments are not required in these cases.