

*FEDERATION DES BARREAUX D'EUROPE*  
*EUROPEAN BARS FEDERATION*  
*VERBAND EUROPÄISCHER RECHTSANWALTSKAMMERN*  
*FEDERACION DE LOS COLEGIOS DE ABOGADOS DE EUROPA*  
*FEDERAZIONE DEGLI ORDINI FORENSI D'EUROPA*

**REPORT ABOUT THE COST OF JUSTICE AND THE LEGAL AID CONDITIONS**

**MAY 2019**



**ACCESS TO JUSTICE - COMMISSION**

# ACCESS TO JUSTICE

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## **Abstract**

Access to Justice.

Main topics of observation and study:

1. Costs of justice;
2. Time of justice;
3. Legal aid;
4. Systems of alternative dispute resolution (limits or aids?);
5. Effectiveness of Justice: due process and trial brief.

## **Project and vision**

Access to justice has been defined as “an equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied”.

It doesn't simply mean access to lawyers and courts.

It means access to ombudsmen, advice agencies and the police law; it means public authorities behaving properly; it means everyone having some basic understanding of their rights; it means making law less complex and more intelligible.

Access to justice may mean ensuring physical accessibility to the courthouse, explaining what the law means on the internet, providing translations, finding alternative dispute resolution other than through the courts, offering legal aid and similar steps in order to remove barriers of various kinds.

It means being "treated fairly according to the law and if you are not treated fairly being able to get appropriate redress".

We must ensure equal rights and opportunities to the parties of the case guaranteeing that a FAIR TRIAL will be held in front of an independent and impartial Court.

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

"Fair Trial" includes:

- the right to be heard by a competent, independent and impartial tribunal
- the right to a public hearing
- the right to be heard within a reasonable time
- the right to counsel
- the right to interpretation
- the right to get a decision within a reasonable time.

In order to reach that goal, we must allow those who do not have sufficient financial resources to meet the costs of a court case or legal representation in order to have the parties right to be heard equally respected.

We must also pursue effective justice developing and amending our procedures in order to remove differences amongst procedural justice and real justice.

Sometimes an unfair decision can be however quick and formally correct in accordance with the provision of law: in this case we have to understand the reason why real justice has not been achieved and act to remove any obstacle which could jeopardize our effort.

All modern legal systems recognize the need to guarantee better access to justice for individuals and companies.

In our European systems different mechanisms exist to help citizens and companies to enforce their rights such as "alternative dispute resolution" and legal aid.

An important form of alternative dispute resolution is mediation ran by the mediator who assists the parties to negotiate a settlement which may concern a variety of domains, with a determined structure, timetable and dynamics.

Mediators use various techniques to open, or improve, dialogue and empathy between disputants, aiming to help the parties reach an agreement and depending on the mediator's skill and training.

According to Italian legal system, mediation is in certain cases compulsory and the procedure has been considered an obstacle to justice rather than a form of guarantee.

Several reasons have been brought to support such negative point of view: the citizen has got to face costs of the mediation procedure and later Court, mediators' background and quality and others.

Today, mediation valuation has changed and its success is really positive.

The FBE Commission will try to understand how our systems ensure effective access to justice - suggesting common solution to improve and guarantee fair trial - because rights and freedoms are vital checks and balances in any civilized society but meaningless without access to justice or the practical means of understanding and enforcing the law of the land.



# BULGARIA

## Legal aid

According to article 22 of the Legal Aid Act, the conditions for both civil and criminal cases are the same.

It is granted to people who satisfy the eligibility requirements for monthly social assistance and / or have been placed in specialised institutions where social services are provided; it also granted to a foster family, family or friends and relatives with whom a child is placed.

In civil and administrative cases, there are additional requirements as legal aid is granted where - on the basis of evidence presented by the relevant competent authorities - the Court determines that the party is unable to pay for the assistance of a lawyer.

To arrive at such determination, the Court will take into consideration: income of the person or family, property status, family situation, health status, employment status, age and other circumstances.

In the area of criminal justice for defendants, legal aid covers cases in which defence or representation by legal counsel is mandatory.

The legal aid system must, furthermore, cover cases in which a suspect, an accused, a person incriminated, a defendant or a party to a criminal, civil or administrative case is unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice require this.

There are no specific conditions in the law that apply to victims of crime and defendants therefore general rules for legal aid in criminal cases are applicable.

There are specific exemptions from fees and expenses which are not due by the claimant in case of workers, employees and members of collective claims, labour claims, claims for maintenance, claims filed by a prosecutor, claims for damages from tort from a crime, claims filed by appointed special representatives of a party whose address is not known.

Fees and expenses for proceedings must also not be deposited by natural persons, where the Court recognises that they do not have sufficient resources to pay them.

## **Lawyer's Fees**

According to the Bulgarian Bar Act (article 36, last amended SG 69/05.08.08) attorneys have the right to remuneration for their labour.

The amount of the remuneration must be agreed in a contract between the attorney-at-law and his or her client.

The amount of the contract must be fair, justified and may not be lower than that envisaged for the type of work undertaken (Ordinance of the Supreme Bar Council).

In the absence of a contract, on request by the attorney-at-law or the client, the Bar Council must set the remuneration that may be fixed in absolute terms and/or as a

percentage of an amount that may, depending on the outcome of the proceedings, be awarded by the Court.

This excludes remuneration in criminal cases and in civil cases where a non-material interest is involved.

The remuneration fee is regulated in line with the Ordinance of the Supreme Bar Council No 1 from 2004.

Since 2006, in Bulgaria there are private enforcement agents and state functionaries (bailiffs) and their fees are regulated in the Tariff for state fees collected by the Courts.

A private enforcement agent charges an additional fee of 50 percent of the standard fee for serving documents on non-working days and holidays, for sending subpoenas by mail and for making copies of the complaint, notification and papers.

The fees for civil proceedings are provided in section I of the Tariff for state fees collected by the Courts.

The fees are paid before the proceedings begin or the required actions are performed (article 76 of the Civil Procedure Code).

The coverage of costs and remuneration in criminal proceedings is regulated by the Criminal Procedure Code and according to article 187 those costs must be covered by the amount specified in the budget of the respective Institution, except in cases specified by law.

There are no fixed costs in constitutional proceedings because there are no constitutional proceedings in the Bulgarian legal system.

Article 40 (3) of the Bar Act provides that “attorneys-at-law shall be obligated to accurately inform their clients of their rights and obligations”.

There is no explicit obligation to provide information to their clients on anticipated costs in the course of legal proceedings; however, the lawyers’ ethical code implies such an obligation.

Clients rely mainly on their lawyers to inform them about costs because there is no official or unofficial website or other public body that provides such information.

On the website of the Supreme Judicial Council, you can find annual and bi-annual reports of Court activities at all levels and information on the average length of Court proceedings in civil, criminal and administrative cases.

VAT is included in the costs (according to the tariffs and regulations above).

## Court Costs

The fees paid by the claimant (including expenses for civil proceedings and remuneration for one attorney (if the party had one) must be paid by the defendant in proportion to the awarded amount of the claim.

If the defendant has provided no reason for the lawsuit, the expenses must be awarded to the claimant.

The defendant also has the right to claim paid expenses in proportion to the denied part of the claim. The defendant is also entitled to expenses if the lawsuit is terminated.

If the claim paid by the party for remuneration of an attorney is excessively high, with respect to the actual legal and factual difficulty of the case, the Court may, upon request of the opposite party, award a smaller amount, but not less than the minimum amount.

Where the case is decided in favour of a person who is exempt from state fees or expenses for proceedings, the sued person must pay all the due fees and expenses.

The respective amounts must be awarded to the Court.

If the claim of a person who has used legal aid is recognised, the paid attorney's remuneration will be awarded to the National Bureau of Legal Aid, in proportion to the recognised part of the claim.

In cases of suing decisions, the person who has used legal aid will owe expenses in proportion to the denied part of the claim.

Attorney remuneration will also be awarded in favour of legal persons and single entrepreneurs, if they have been defended by an employee – legal advisor.

If the case is finalised by an agreement, half of the deposited state fee must be paid back to the claimant.

The expenses of proceedings and the agreement remain, if not otherwise agreed.

Where a prosecutor participates in the lawsuit, the expenses due must be awarded to the state, or be paid by the state.

Costs for criminal proceedings must be covered by amounts specified in the budget of the respective Institution, except in cases specified by law. In cases of crime based on a complaint by a victim and filed with the Court, costs must be deposited in advance by the private complainant.

If they are not, the private complainant must be given a term of seven days to deposit them. In cases based on a complaint by a victim and filed with the Court, costs for evidentiary claims made by the defendant in Court must be covered by the Court's budget.

The amount of costs must be determined by the Court or the body of pre-trial proceedings. The remuneration of witnesses – workers or employees – must be determined by the Court.

The Court must decide on the issue of costs incurred when sentencing or ruling.

Costs for translation during pre-trial proceedings must be at the expense of the respective body; those incurred during Court proceedings will be at the expense of the Court.

Where the accused party is found guilty, the Court will sentence him/her to pay the costs of the trial, including attorney fees and other expenses for the defence counsel appointed ex officio.

These will include the expenses incurred by the private prosecutor and the civil claimant, where the latter have made a request to this effect. In the presence of several sentenced persons, the Court will apportion the costs payable by each of them.

Where the accused party is found not guilty on some charges, the Court will sentence the accused to pay only the costs incurred in connection with the charge under which he/she has been found guilty.

Where the accused is acquitted or criminal proceedings are terminated, all costs in publicly actionable cases remain at the expense of the state, and action raised by a complaint by the victim will be at the expense of the private complainant.

A writ of execution for the costs awarded must be issued by the first instance Court.

The remuneration of the experts shall be determined by the Court, taking in view the work done and the expenses made in accordance with: complicity of the task, competence and qualification of the expert, duration of the fulfilment of the task, quantity of the work done and necessary expenses (such as materials used, consumables, tools, equipment, etc).



The rules for experts apply for translators as well.

Costs for translation during pre-trial criminal proceedings are at the expense of the respective body, and those during Court proceedings are at the expense of the Court.

## **Mediation and Arbitration (ADR)**

Mediation is entirely voluntary. Although mediation provides an alternative means of resolving a dispute without going to court, it is not a prerequisite when initiating court proceedings.

There is no specific code of conduct for mediators. However, provisions on ethical standards are contained in the Law of Mediation and Regulation No. 2 of 15th March 2007, which sets out the conditions and process of approving organisations that provide mediation.

Mediation is not free of charge; payment is subject to agreement between the mediator and the parties involved.

Arbitration in Bulgaria is regulated by the Law on International Commercial Arbitration (LICA). Certain aspects of arbitration are also covered by the Civil Procedure Code (CPC), the Private International Law Code (PILC) and the Commercial Law.

Practice in Bulgaria includes either fixed fee structures for each proceeding, or hourly rates that are often subject to a cap. In each case, the fees take into account the

Regulation on the minimum amount of the attorney fees issued by the Supreme Attorney Council of the Bulgarian Bar Association.

The LICA is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration (Model Law). The 2006 amendments to the Model Law have not yet been enacted. The matters regulated by the following provisions of the Model Law are differently regulated under the LICA:

There are a number of arbitration institutions in Bulgaria. The most important among them are the institutions established by the main business organisations in the country, including:

The Court of Arbitration at the Bulgarian Chamber of Commerce and Industry.

The Arbitration Court at the Bulgarian Industrial Association.

The Court of Arbitration at the Confederation of Industrialists and Employers in Bulgaria.

For contracts with an international component parties most commonly agree to have international arbitration administered by the International Chamber of Commerce, Vienna International Arbitral Centre or London Court of International Arbitration.

# ENGLAND & WALES

## Legal Aid

At the time of the presentation of my last paper in Bilbao, I took what other members of the Exeter delegation considered to be an unduly pessimistic view of the way things were going in England and Wales.

*I commented on the high cost of litigation, on the Government's determination to drive down the availability of Legal Aid by restricting it and that Legal Aid deserts were likely to be caused as a result. I also commented from time to time on the level of claims in the Small Claims Court (Legal Aid is not available for claims in the Small Claims Court) and theorised that the Government was likely to raise the Small Claims limit so as to exclude further people from Legal Aid. I also suggested either then or in subsequent meetings that the situation was bound to get worse.*

*Unfortunately, I have been proved right.*

*This report has to be in the nature of an Interim Report because the Government set in hand a number of procedures which are ongoing but these are:-*

- 1. To reduce the cost of very high cost cases in the Criminal Court.*
- 2. To invite practitioners in criminal cases to enter a tendering process so that, save in very big cities, only one or at the most two firms in an area would be franchised to undertake criminal work.*
- 3. To move the bulk of the small criminal cases from being calculated on a time and cost basis to a fixed fee basis.*

4. *To restrict the number of firms franchised to provide Legal Aid services.*
5. *To restrict the number of cases which can be taken under the Civil Procedures.*
6. *To move Civil Family cases to a fixed fee basis.*

*The present coalition Government, having inherited what they say was a disastrous financial situation from the previous administration, are having to apply deep cuts to the spending of virtually all Government departments and the saving expected from the Ministry of Justice (who also administer Legal Aid) being something in the order of 20%.*

*The Government's first proposals were put into effect by a review by the Community Legal Service of all firms undertaking civil Legal Aid and the removal of a number of smaller firms from the list of franchises. This resulted in a lot of highly respected and effective Legal Aid providers being excluded.*

*The remaining firms, however, who were told that they would continue to be franchised, were not provided with any larger number of "matter starts" which means essentially that they can only undertake the same number of cases as previously although the number of people seeking help from those firms which retained a Legal Aid franchise is inevitably going to rise.*

*The Government's proposals were challenged in the Courts which took the view that the Government had failed to consult properly and therefore those firms who had been told that they were no longer franchised had their franchises restored for a year whilst the alleged period of consultation should take place. My firm is one of those firms that were excluded in favour of a larger firm in my area and I know of very much larger firms in*

*the County of Devon who have also been excluded for reasons which appear to be arbitrary and ill thought out.*

*At the same time as the assault on the provision of Legal Aid has continued by the Government, the Government are making procedural changes in the conduct of both Civil and Criminal litigation, particularly in the Family sphere which are intended to save money but the result of which will be inevitably to distance potential claimants and defendants from the provision of Legal Aid in cases where they would have previously had the benefit of a lawyer.*

*Whilst these procedures are working through, the Government has again launched an assault on the high cost of civil litigation in England and Wales and has endorsed a raft of proposals suggested by a retired Judge which will substantially reduce the amount of legal fees which can be recovered from an unsuccessful litigant challenging the no-win no-fee agreements which the previous administration had approved in order to take the place of Legal Aid in accident claims and other civil actions for which Legal Aid was removed in 1997.*

*The Government has now decided that, as I had forecast at least five years ago, the Small Claims Court limit must be increased to £15,000 (I had postulated that it would be £10,000) thus removing them from Legal Aid..*

*With effect from the 6th April 2011 the Government has decreed that all litigants in the Family Courts will have to go to mediation before they will be allowed to issue process.*

*This again is a move designed to limit the number of contested cases going through the Court.*

*The Government is also proposing that all Small Claims must go to mediation before the Court process can be issued.*

*It doesn't take a leap of imagination to see that the next stage will be that all civil claims whether or not they are in the Small Claims Court will have to go to mediation before the Court will accept process.*

*This is an ongoing situation which will no doubt change but the way forward under this Government is clear and that is:*

- 1. The high cost of Civil and Criminal litigation will somehow be capped.*
- 2. The availability of Legal Aid will be substantially reduced as will its profitability.*
- 3. The outcome is likely to drive more people to be litigants in person with the consequence that the Courts will be over-crowded with inexperienced litigants and the inevitable consequence will be a lengthening in the time to trial and time at trial and the reduction of the efficiency of the Courts.*
- 4. Poor litigants will be denied the skills of the lawyers who will no longer be available to poor litigants because of the reduction in Legal Aid.*

*Watch this space!*

*Jeremy J Ferguson*

Law: Legal Aid, Sentencing, Punishment of Offenders 2012	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
WHO	<p>Anyone subject to English law, resident in the country.</p> <p><u>Criminal</u>: Persons who are charged, convicted,</p> <p><u>Civil</u> Family: no legal aid except where domestic violence, forced marriage or need to protect a child from abuse.</p> <p>Housing: no legal aid except where proceedings may result in loss of the home.</p> <p><u>Administrative cases</u>:: No legal aid for administrative tribunals (Employment, Social Security and others) except at Upper Tribunal, Court of Appeal or Supreme Court,</p> <p><u>Public law</u>: Judicial Review.</p>	<p>All legal advice at police station is free. Free advice and representation at the magistrates' court If client did not get legal advice before case comes up at the magistrates' court, free legal advice and representation by the court duty solicitor.</p>		<p>Not after sentence.</p>



Law: Legal Aid, Sentencing, Punishment of Offenders 2012	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<p align="center"><b>CONDITIONS</b></p>	<p>Financial test:            CIVIL:            Gross monthly income (earnings and assets before tax)(all permanent members of the household) must be less than:            Gross monthly income below £2,657 or less, followed by check of disposable income by solicitor (deductions for partner, dependent children.            Full legal aid if resulting monthly income is less than: £733            People on social security benefit: full legal aid.            Capital over £8000: no legal aid.            Savings over £3,000 taken into account . Value of equity in the home is taken into account.            Sliding scale between £3000 between £8,000 reduces the amount of legal aid, and client has to pay contribution.</p> <p>Further test: must be serious, and chance of success.</p> <p>CRIMINAL: A Representation Order covers representation by a solicitor and, if necessary, by a barrister in criminal cases.            To qualify for a Representation Order in the magistrates' court, client must meet financial conditions. Clients in receipt of</p>	<p><b>Statutory charge.</b>            At the end of the case, the legal aid agency will take what has been spent on the solicitor and barrister out of the award and client gets what's left.</p> <p>Children under 18 qualify with no financial test.</p>		<p>Too low income level for people earning.</p> <p>Complicated calculation. Have to prove all earnings, with wage slips over a period of time. Any change must be reported.</p> <p>Contributions (payments) have to be collected from client.</p>

Law: Legal Aid, Sentencing, Punishment of Offenders 2012	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
WHAT	<p><b>Legal Help</b> – advice on rights and options and help with negotiating</p> <p><b>Help at Court</b> – someone speaks at court, but does not formally represent (Duty scheme for housing possession cases)</p> <p><b>Family Mediation</b> Helps to come to an agreement in a family dispute, resolve problems involving children, money, family home</p> <p><b>Family Help</b> Representation in family disputes like drawing up a legal agreement</p> <p><b>Legal representation</b> Representation at court by a solicitor or barrister</p> <p><b>Controlled Legal Representation</b> Representation at mental health tribunal proceedings or before the First-tier Tribunal in asylum or immigration cases.</p> <p><b>Immigration and asylum</b> Asylum applications, detention, application for indefinite leave to remain after relationship breakdown because of domestic violence; EC citizen applying to stay in the UK after relationship break down because of domestic violence: applications to stay in</p>	Fees are only paid by Legal Aid Agency to solicitor after the case has finished, and the file has been costed.		Reduced areas of scope, means that many people have to go to court with no representation.

Law: Legal Aid, Sentencing, Punishment of Offenders 2012	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>HOW PROCEDURE</b>	<p>First lawyer after arrest: duty advocate advises at police station or own solicitor, must have a contract with the Legal Aid Agency.</p> <p>Solicitor submits the form completed by the client, plus evidence of income.</p> <p>Client declaration on family composition and incomes, obligation to communicate variations during procedure</p>	No financial test on arrest, all help at police station is free.	<p>Revocation if evidence shows a higher standard of living or not compatible with declared income</p> <p>Exceeding the income limits during the proceedings</p> <p>Second lawyer appointed</p>	<p>Solicitors' firms have to submit a tender for contracts with the Legal Aid Agency. This is a competitive bid system.</p> <p>There is a limited number of contracts.</p>
<b>EFFECTS</b>	Fixed fees for lawyers in criminal cases. No allowance for travel expenses and time waiting at court.	<p>Choice of lawyer: only a solicitor working in a firm which has a contract with the Legal Aid Agency</p> <p>Technical experts on fixed fees only.</p>		<p>Low income for legal aid lawyers.</p> <p>Exclusive contracts means that Ministry of Justice has limited the number of Solicitors who can do legal aid. Fewer legal aid lawyers. Some areas of the UK have no legal aid solicitors available.</p>

## Costs of Justice

LAWYER'S FEES (rule of law)	INTRODUCTORY COURT FEES	EXEMPTIONS	FINAL COURT FEES	CRITERIA
<p>This is a very basic overview: For litigation carried out under legal aid (now largely limited to public law family, some housing cases and judicial review, lawyers' fees are prescribed by regulation either as a fixed fee for the whole case or a specified hourly rate. Prescribed legal aid fees are set out in the Legal Aid Remuneration Regulations: <a href="http://www.legislation.gov.uk/ukssi/2013/422/contents/made">http://www.legislation.gov.uk/ukssi/2013/422/contents/made</a> If a legally aided litigant is successful in proceedings they may be able to recover costs at a higher 'inter partes' rate although in most family cases the general rule is that each party is responsible for their own costs so the legally aided party's lawyers recover costs at legal aid rates.</p>	<p>There are a wide range of court fees for commencing proceedings depending upon the type of proceedings and the court or tribunal they are issued in. Fees for money claims vary in relation to the value of the claim. Further details can be found here:  <a href="https://www.gov.uk/court-fees-what-they-are">https://www.gov.uk/court-fees-what-they-are</a></p>	<p>The Fee Remission Scheme is a means tested scheme which entitles those with low levels of income and capital to have their court fees either waived or to have the fees reduced. Further details about the scheme can be found here:  <a href="https://www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees">https://www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees</a></p>	<p>There are no court fees automatically payable on conclusion of a case, but further action required subsequent to a judgment, such as enforcement of the judgment or an application for court assessment of costs will be subject to a fee.</p>	<p>It is not clear how this column is relevant to the jurisdiction of England and Wales.</p>

<b>LAWYER'S FEES (rule of law)</b>	<b>INTRODUCTORY COURT FEES</b>	<b>EXEMPTIONS</b>	<b>FINAL COURT FEES</b>	<b>CRITERIA</b>
<p>In non legally aided cases lawyers costs can be claimed at market rates although in some proceedings fixed costs apply. Costs in civil proceedings are assessed by the courts if not agreed by the parties and can be 'taxed' down by a costs judge if deemed to be excessive.</p> <p>The general principle is (with the exception of most family proceedings) that 'costs follow the cause' i.e. the losing party pays the winners costs. These costs can be awarded on a 'standard' or 'indemnity' basis, the latter being more advantageous to the winner as any doubt about the reasonableness of costs being incurred is resolved in the receiving party's favour.</p>				

## Mediation

Mediation can be used to resolve a whole range of everyday civil and commercial disputes including housing issues, business disputes, workplace disputes, small claims, debt claims, boundary disputes, employment disputes, contractual disputes, personal injury and negligence claims as well as community disputes such as nuisance or harassment issues.

Mediation can also be used in relation to family disputes, including divorce, dissolution, civil partnership dissolution and Children Act applications.

It is not restricted to former partners or spouses: for instance, grandparents could use family mediation to get an arrangements for them to continue a relationship with their grandchildren.

In order to ensure the quality of Court - referred mediation in civil disputes (excluding family), the Ministry of Justice and Her Majesty's Courts and Tribunals Service (HMCTS) have established two different processes via which parties can resolve disputes depending on the value of the claim.

The Small Claims Mediation Service is an in - house service provided and run by HMCTS, in relation to cases falling within the small claims track, generally cases under £10000.

For higher value cases, over £10000, the Ministry of Justice has worked with the Civil Mediation Council (CMC) to introduce an accreditation scheme via which mediation provider organisations can apply to be included in the civil mediation directory and for Courts to refer parties to them in any suitable cases.

Civil mediation is not regulated by law, nor is it a prerequisite to Court proceedings: however, parties in civil cases are required to consider mediation seriously before going to Court.

The civil procedure rules (CPR) govern the practice and procedure to be followed in the civil divisions of the Court of Appeal, the High Court and County Courts.

While mediation is entirely voluntary, the civil procedure rules set out the factors to be taken into account when deciding the amount of costs to award having regard to the efforts made, if any, before and during the proceedings in order to try to resolve the dispute.

Consequently, if a winning party has previously refused a reasonable offer of mediation, the Judge could decide that the losing side will not be required to pay the winning side's costs.

There is no national code of conduct for mediators but, in order to be accredited by the CMC, the civil mediation provider must adhere to a code of conduct.

## **Family Mediation**

With regard to family disputes, mediation is self - regulated, consisting of a number of membership organisations or accreditation bodies to which mediators are affiliated.

These bodies have converged to form the Family Mediation Council (FMC) in order to harmonise standards in family mediation.

Another function of the FMC is to represent its founding member organisations and family mediation practitioners at large in the dealings of the profession with government.

The FMC is a non - governmental body and plays a central role among its member organisations, which are all non - governmental subjects (such as ADR Group, Family Mediators Association, National Family Mediation, College of Family Mediators Resolution, The Law Society).

A family mediation service finder is available within the GovUK website (previously known as DirectGov) at Family Mediation Service Finder.

Like the Civil Procedure Rules, the Family Procedure Rules (a comprehensive set of rules that relate to court procedure) encourage the use of alternative dispute resolution (ADR) methods.

The Civil Mediation Directory offers a search facility to find a mediator who is able to provide mediation in a location suitable to the parties.

There is no national training body for civil mediators who are trained by the private sector, which is self-regulated.

Family mediators come from a variety of backgrounds, including legal, therapeutic and social services, and there is no legal requirement that they undertake any specialist training.

The cost of mediation varies by provider and is not generally regulated by the state.

In civil matters, the cost of mediation relates to the value of the issues in dispute and the time required to undertake the mediation process.

The rates for the provision of mediation provided via the online civil mediation directory are available from the justice website.

The LawWorks charity provides free mediation to those who cannot afford to pay and it can be contacted on 01483216815 or via the LawWorks Mediation website.



Directive 2008/52/EC implemented in the UK under The Cross-Border Mediation (EU Directive) Regulations 2011 (SI 2011 No 1133) allows those involved in a cross-border dispute - where one party is domiciled in a Member State at the time of the dispute - to request that a written agreement arising from mediation be made enforceable.

Parties to a civil dispute, issued in Court, who have reached an agreement through mediation, may apply to the Court to have their agreement legal endorsed by a Judge.

Once endorsed by a Judge the agreement becomes legally binding and enforceable 'consent order', should the Court be satisfied as to the fairness of the agreement reached.

# FRANCE

## Legal Aid – Aide Juridictionelle

The current scheme is governed by the Legal Aid Act (n.91-647 of 10 July 1991) and Decree n.91-1266 of 18 December 1991.

It covers financial support for Court proceedings and out - of - Court settlement proceedings, aid towards advocates' fees in criminal proceedings and access to the law.

It entitles the recipient to free assistance from an advocate or other legal practitioner (bailiff, avoué, notary, auctioneer, etc.) and to exemption from Court costs.

You may receive legal aid if the average of your combined resources for the preceding calendar year (excluding family allowances and certain welfare benefits) does not exceed a certain threshold set by statute each year.

If You exceed the limits, you may still be able to receive legal aid exceptionally if your action is particularly worthy of interest given its subject-matter and the likely cost (section 6 of the 1991 Act).

You are entitled to legal aid if you are a French national or a citizen of the European Union or a foreign national habitually lawfully residing in France.

You are also entitled to legal aid for a case in a French Court if, although you are a foreign national not residing in France, you are a national of a State that has an international or bilateral agreement with France giving entitlement to legal aid.

Legal aid is also given without a residence requirement to foreign nationals who are minors, witnesses, placed under formal examination, charged, accused, convicted or have joined a civil action to a criminal prosecution, or where the action concerns entry and residence in France.

Legal aid is given if the action is not manifestly inadmissible or devoid of substance.

It can be given for all or part of the proceeding and to assist in coming to a settlement before the action comes to trial.

The legal aid application form must be filled in and the supporting documents specified in it must be attached; these concern financial resources (your own and those of people who live in your home), the subject of your application and the Court concerned.

All litigants are free to indicate in that form their own advocate. If you do not know an advocate, one will be designated for you by the President of the Bar for the Regional Court.

If you receive full legal aid, this will cover all the costs of the proceedings, including fees paid direct to the advocate or other practitioners (bailiff, avoué, notary, etc.) and calculated on a fixed scale depending on the type of procedure.

Legal aid can be withdrawn (section 50 of the 1991 Act) during or after the proceedings if:

- aid was obtained on the basis of inaccurate statements or documents;
- in the course of the proceedings you receive such resources that legal aid would not have been given if you had had them at the time of the application;
- as a result of the enforceable judgment you receive such resources that legal aid would not have been given if you had had them at the time of the application; or
- the proceedings that you have commenced with the legal aid is found to be dilatory or abusive.

Legal aid may be given with retroactive effect where a party has commenced an action and won it but legal aid was refused on the ground that the action had no reasonable prospect of success.

Legal aid makes no distinction between civil or criminal matters, or the nature of the dispute. It focuses solely on the applicant's resources when deciding to grant or refuse the benefit.

Legal aid may be full or partial, depending on the resources of the applicant.

<p>Law n°91-647 10/07/1991 Dec.n°91-1266 19/12/1991</p>	<p><b>RULE</b></p>	<p><b>SPECIFICATIONS</b></p>	<p><b>EXCLUSIONS</b></p>	<p><b>PROBLEMS</b></p>
<p><b>WHO</b></p>	<p>FRENCH AND UE CITIZENS - EXTRA UE AND STATELESS CITIZENS ONLY IF CLEARLY IDENTIFIED</p> <p><u>CRIMINAL CASES</u>: charged, convicted, victims, injured, civil liability, injunctions and other preventative measures</p> <p><u>CIVIL FRAUD</u> <u>ADMINISTRATIVE CASES</u>: if not manifestly baseless claim, respondent</p> <p><u>IMMIGRATION</u>: as above;</p>	<p>Extra UE citizens: REQUIRED BIRTHPLACE CONSULAR AUTHORITY CERTIFICATE OF FOREIGN EARNINGS</p>	<p>EXTRA UE CITIZENS “SANS- PAPIERS” (except expulsion procedures)</p> <p>LITIGATIONS in EU Member States Courts</p> <p>FRENCH CITIZENS with legal protection contract (or included in insurance contract)</p>	<p>Persons unable to prove their identity</p> <p>Failure to obtain consular certificate</p>
<p><b>CONDITIONS</b></p>	<p><u>MONTHLY EARNINGS</u> BEFORE TAXES <u>LESS THAN</u> € 1000 to 2087 depending of the number of persons in house (1 to 4) SUPPORT will be between 25% to 100% of the costs</p>	<p>WELFARE BENEFICIARIES: NO INCOME LIMITS</p> <p>VICTIMS OF CRIMINAL CASES: NO INCOME LIMITS</p>		<p>Significant undeclared earnings</p> <p>Too low income level (out single employment pension)</p> <p>Advantage for tax evasion and false residency declaration</p>

<p>Law n°91-647 10/07/1991 Dec.n°91-1266 19/12/1991</p>	<p><b>RULE</b></p>	<p><b>SPECIFICATIONS</b></p>	<p><b>EXCLUSIONS</b></p>	<p><b>PROBLEMS</b></p>
<p><b>WHAT</b></p>	<p>CRIMINAL PROCEEDINGS ALTERNATIVE PUNISHMENT INJUNCTIONS</p> <p>Evidential issues in PRIVATE CLAIMS ADMINISTRATIVE JUDGMENT</p> <p>EVERY PROCEDURE REGARDING MINORS</p>	<p>LEGAL EXPENSES ACCORDING TO THE STATE SCHEDULE</p>		
<p><b>HOW PROCEDURE</b></p>	<p>FORM SEND with the requested documents in the Legal aid office of the relevant COURT</p>	<p><u>AUTOMATIC ADMISSION:</u> Office designation MINORS persons admitted to PROTECTION PROGRAM EXPULSION NOT UE CITIZENS persons formally declared UNTRACEABLE</p> <p>LEGAL EXPENSES AFTER JUDGMENT</p>		

<p>Law n°91-647 10/07/1991 Dec.n°91-1266 19/12/1991</p>	<p><b>RULE</b></p>	<p><b>SPECIFICATIONS</b></p>	<p><b>EXCLUSIONS</b></p>	<p><b>PROBLEMS</b></p>
<p><b>EFFECTS</b></p>	<p>LAWYER AND BAILIFF FEES AND EXPENSES</p>	<p><u>FREE CHOICE OF LAWYER</u> possible or LAWYER appointed by the Legal aid office of the relevant Court</p> <p>TECHNICAL EXPERT when Judge requires technical study or if later considered relevant</p>	<p>COSTS paid before the decision of the Legal aid office</p> <p>DAMAGES and COMPENSATION</p>	<p>Single phase of proceedings can last several years</p> <p><u>Months</u> waiting for a judicial decision</p> <p><u>Months</u> waiting for an effective payment by the MINISTRY OF JUSTICE</p>



## Lawyer's Fees

There is no fixed scale as lawyer and client are free to agree on the rate but there are fees indispensable in order to pursue an action and their amount has been set either by legislation or by order of the Court.

These fees might comprise: charges, taxes or levies paid to Court offices or the tax authorities; costs of translating documents (where this is required by statute or by an international undertaking); witness expenses; remuneration of technical specialists fixed outlays (fees for process servers, Court advocates, lawyers); emoluments for Court or public officials; costs incurred in serving a document abroad; social welfare reports ordered in family matters; remuneration of the person appointed by the Courts to represent the interests of the child.

Civil proceedings costs include all sums paid out or owed by the parties before or in the course of an action.

These are, for example: before the opening of the proceedings, the costs of consulting legal advisers, technical specialists and travel costs; in the course of the action, these costs may concern the sum paid to officers of the Court or Court officials and fees paid to the State and consultancy fees: after the proceedings, they may concern the costs of enforcing the judgment.

As there are no provisions for individuals to bring an action before the Constitutional Council under current French rules of procedure, there is no cost to be examined.

## Court costs

In civil matters, these costs are enumerated exhaustively in section 695 of the new Code of Civil Procedure and consisting mainly of:

refreshers for advocates (and avoués in the Appeal Court);

Court bailiffs' procedural charges;

judicial examination and investigation charges;

witnesses' allowances (fixed scale).

Court costs are borne by the losing party but the Court may by reasoned decision order the other party to pay them in whole or in part, in which case it specifies how they are to be shared.

The Court gives its decision on an equitable basis, having regard also to the losing party's ability to pay and principles of fairness.

The Court may, of its own motion, state that there are no grounds for making such an order for reasons based on the same consideration.

In criminal proceedings the State bears the costs of Justice.

People convicted of an offence must pay a fixed charge for the proceedings, based on the seriousness of the offence.

Before the small claims and summary offences Court and the district Court, the parties are not bound to instruct a lawyer.

If the value of the action is less than EUR 4 000, matters may be brought before these Courts using a simplified procedure which dispenses with the parties' requirement to use a Court appointed process server.

### **Experts' fees**

In civil matters, remuneration of experts appointed by the Court is set by order of the Court.

If the Court instructs an expert, it will set a retainer from which the remuneration will be deducted and the amount of it will be as close as possible to the expected final payment.

The Court will designate the party or parties who must lodge the retainer with the Court office; once the expert's report is lodged, the Court will set the remuneration, having particular regard to enquiries carried out, respect for time limits and quality of the work done.

The Court will authorize the expert to return the appropriate amounts lodged at the Court office, or as appropriate, payment of additional sums to the expert, indicating the party or parties who are to be responsible for this.

The judgment or decision bringing an end to the action gives a ruling on liability for remunerating the expert.

As a general rule, this liability falls to the losing party, unless the Court, through a reasoned decision, makes the other party liable for part or all of this fee.

### **Translators' and interpreters' fees**

These fees are the responsibility of the losing party, unless the Court, through a reasoned decision, makes the other party liable for part or all of this fee.

### **Mediation**

Order (ordonnance) No 2011-1540 of 16 November 2011 has transposed EU Directive 2008/52/EC into French law.

This Order of 16 November 2011 amends the Act (loi) of 8 February 1995 so as to establish a general framework for mediation.

The system defines the concept of mediation and the conditions that the mediator must satisfy confirming the principle of confidentiality, which is vital to the success of the mediation process.

Parties may refer a matter to mediation in any area of law, provided the mediation does not undermine rules of public policy governing social and economic conduct (ordre public de direction).

Mediation is used most often in family cases at the Family Court, through a family mediator (médiateur familial) and in small claims cases before the local Court or the district Court, through a legal conciliator (conciliateur de justice).

The Order confirms the principle that at any stage in the proceedings a Court hearing a dispute may designate a mediator, who in practice may also be a legal conciliator (conciliateur de justice).

If Court proceedings have already been brought, the Court hearing the dispute may - with the consent of the parties - appoint a third party to ascertain the parties' positions and to compare and contrast their points of view with a view to enabling them to find a solution to the dispute' (Article 131-1 of the Code of Civil Procedure).

Where the parties have not agreed to mediation, the Court may direct them to meet a mediator in order to have the purpose and operation of mediation explained to them.

In France there is neither central or government authority responsible for regulating the profession of mediator nor current plans to create one.

There is no national code of conduct for mediators and no national, official website relating to mediation.

The Paris Chamber of Commerce and Industry (Chambre de commerce et d'industrie) has established a code of good conduct, and supervises compliance with it itself.

At present French legislation does not make any provision for specific training in mediation, except in family matters, where a family mediator's diploma was introduced by an order dated 2 December 2003 and a ministerial order dated 12 February 2004.

The legislation provides for training in family mediation to be given by approved centres, and a diploma to be awarded by the regional prefect after completion of training or a certification process validating the knowledge and experience acquired by the mediator.

When parties resort to mediation as an alternative method of resolving disputes, whether in Court proceedings or out of Court, fees have to be paid.

If the parties resort to mediation in the course of Court proceedings, the mediator's fee may be covered by legal aid.

It will in any event be determined by the judge assessing legal costs (magistrat taxateur) after the mediator's role is over, on presentation of a report or a statement of expenses (Article 119 of Order (décret) No 91-1266 of 19 December 1991).

# GERMANY

## Legal Aid

§§ 114 ff ZPO civil §§ 140 ff StPO criminal	<b>RULE</b>	<b>SPECIFICATIONS</b>	<b>EXCLUSIONS</b>	<b>PROBLEMS</b>
<b>WHO</b>	Every natural person; Every legal person;	For a natural person no residence in Germany needed:	Not for a legal person, if the shareholder can pay the fees;	
<b>CONDITIONS</b>	<ul style="list-style-type: none"> <li>- The applicant must be needy</li> <li>- chance of success</li> <li>- the pursuit of rights must not be wilful</li> </ul>	Income limit is orientated to the welfare, assets will be considered; For a single person the limit is after subtract lease, heating, insurance, 462 €/ month + 210€/ month if employed; If the income is higher and he is not able to pay, the applicant can reimburse the state by instalments		Complicated calculation; Any change must be reported;  if the financial situation improves the applicant has to pay more



§§ 114 ff ZPO civil §§ 140 ff StPO criminal	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS										
<b>WHAT</b>	Fees of your lawyer; Court fees;	At a value of the claim higher than 4.000 €, the fees for the lawyer are less than normal fees; in addition they are capped at a value of the claim of 30.000 €, even if the value of the claim is higher;	The fees of the opposing lawyer are not payed;	Civil: Although the lawyer is payed so much less and the fees are capped at the value of the claim at 30.000 €, his liability is still 100%; the maximum fee is 1150 €.  Criminal normally: <table data-bbox="1675 507 2078 734"> <tr> <td>preliminary proceedings</td> <td>292,00 €</td> </tr> <tr> <td>lump fee post etc.</td> <td>20,00 €</td> </tr> <tr> <td>judicial proceedings</td> <td>352,00 €</td> </tr> <tr> <td>lump fee post etc.</td> <td>20,00 €</td> </tr> <tr> <td>sum</td> <td>684,00 €</td> </tr> </table>	preliminary proceedings	292,00 €	lump fee post etc.	20,00 €	judicial proceedings	352,00 €	lump fee post etc.	20,00 €	sum	684,00 €
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§§ 114 ff ZPO civil §§ 140 ff StPO criminal	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<p style="text-align: center;"><b>FOR WHAT</b></p>	<ul style="list-style-type: none"> <li>- <u>Civil cases (+)</u></li> <li>- <u>Insolvency proceeding:</u> only to avert bankruptcy, not for the proceedings itself, process costs are deferred</li> <li>- <u>Criminal:</u> only for necessary defence, that is: imminent occupational ban, indictable offence (the law provides more than one year prison minimum penalty), trial at higher court, investigative custody</li> <li>- <u>victim of a crime:</u> if allowed to accessory prosecution</li> <li>- <u>Family (+)</u></li> <li>- <u>Administrative cases (+)</u></li> <li>- <u>Public law (+)</u></li> </ul>	<p><u>Criminal:</u> It is not relevant if the client is needy, he will get a assigned counsel; after conviction the convict has to reimburse the fees of court and lawyer</p>		

§§ 114 ff ZPO civil §§ 140 ff StPO criminal	<b>RULE</b>	<b>SPECIFICATIONS</b>	<b>EXCLUSIONS</b>	<b>PROBLEMS</b>
<b>HOW PROCEDURE</b>	<ul style="list-style-type: none"> <li>- For extrajudicial legal advice: the county court at the residence decides about the application;</li> <li>- legal advice for a lawsuit: the responsible judge for the case decides, especially about chances of success;</li> <li>- criminal: the court appoints a duty counsel, if the defendant doesn't choose his own;</li> </ul>	<ul style="list-style-type: none"> <li>- extrajudicial legal advice: the lawyer can only refuse the case if he has an important reason, otherwise he has to take the case; the client pays a lump sum of 15 €;</li> <li>- Every lawyer can give legal aid;</li> <li>- In a civil case normally the lawyer files the application for the client</li> </ul>		<p>If legal aid is not granted the client has to pay the lawyer</p>
<b>EFFECTS</b>	<p>In my estimation the system gives a good range to get legal assistance also for people with low or no income</p>			<p>The costs for the legal aid are paid by the federal state;</p> <p>Because of the high costs of the legal aid, it is very difficult to adapt the legal table of fees for the lawyers. For the last adaptation we had to wait for around 20 years</p>

# Costs of Justice

## Costs of civil procedure in Germany

Value until	500,00 €	1.000,00 €	2.000,00 €	3.000,00 €	4.000,00 €	5.000,00 €	22.000,00 €	110.000,00 €	500.000,00 €	1.000.000,00 €	2.000.000,00 €	4.000.000,00 €	8.000.000,00 €
<b>1st Instance</b>													
<b>1 Lawyer</b>	157,00 €	262,00 €	470,00 €	622,00 €	774,00 €	925,00 €	2.231,00 €	4.495,00 €	9.582,00 €	14.045,00 €	22.970,00 €	40.820,00 €	76.520,00 €
<b>Court Fee</b>	105,00 €	159,00 €	267,00 €	324,00 €	381,00 €	438,00 €	1.035,00 €	3.078,00 €	10.608,00 €	16.008,00 €	26.808,00 €	48.408,00 €	91.608,00 €
<b>Risk in total</b>	420,00 €	683,00 €	1.207,00 €	1.568,00 €	1.929,00 €	2.288,00 €	5.497,00 €	12.068,00 €	29.772,00 €	44.098,00 €	72.748,00 €	130.048,00 €	244.648,00 €
<b>2nd Instance</b>													
<b>1 Lawyer</b>	174,00 €	290,00 €	524,00 €	694,00 €	863,00 €	1.033,00 €	2.496,00 €	5.032,00 €	10.730,00 €	15.728,00 €	25.724,00 €	45.716,00 €	85.699,00 €
<b>Court Fee</b>	140,00 €	212,00 €	356,00 €	432,00 €	508,00 €	584,00 €	1.380,00 €	4.104,00 €	14.144,00 €	21.344,00 €	35.744,00 €	64.544,00 €	122.144,00 €
<b>Risk in total</b>	488,00 €	792,00 €	1.404,00 €	1.820,00 €	2.234,00 €	2.650,00 €	6.372,00 €	14.168,00 €	35.604,00 €	52.800,00 €	87.192,00 €	155.976,00 €	293.542,00 €
<b>3rd Instance</b>													
<b>1 Lawyer</b>	227,00 €	385,00 €	702,00 €	933,00 €	1.163,00 €	1.394,00 €	3.379,00 €	6.820,00 €	14.553,00 €	21.336,00 €	34.902,00 €	62.034,00 €	116.298,00 €
<b>Court Fee</b>	175,00 €	265,00 €	445,00 €	540,00 €	635,00 €	730,00 €	1.725,00 €	5.130,00 €	17.680,00 €	26.680,00 €	44.680,00 €	80.680,00 €	152.680,00 €
<b>Risk in total</b>	629,00 €	1.035,00 €	1.849,00 €	2.406,00 €	2.961,00 €	3.518,00 €	8.483,00 €	18.770,00 €	46.786,00 €	69.352,00 €	114.484,00 €	204.748,00 €	385.276,00 €

*Risk in total* means that you loose the case and pay 2 lawyers and the court fees.  
After the value of 5.000 € we have more single steps that are not shown to keep it more clearly.

## Arbitration costs

### Arbitration Rules from the The German Institution of Arbitration (in force as of 1 March 2016)

#### 1. Amount in **dispute up to 5,000.00 €**

The fee for the chairman of the arbitral tribunal or for a sole arbitrator shall amount to 1,365.00 € and for each co-arbitrator 1,050.00 €

#### 2. Amounts in dispute **from 5,000.00 € to 50.000,00 €**

Amount in dispute	Fee for chairman of arbitral tribunal/ sole arbitrator	Fee for each co-arbitrator
up to 6.000,00 EUR	1.560,00 EUR	1.200,00 EUR
up to 7.000,00 EUR	1.755,00 EUR	1.350,00 EUR
up to 8.000,00 EUR	1.950,00 EUR	1.500,00 EUR
up to 9.000,00 EUR	2.145,00 EUR	1.650,00 EUR
up to 10.000,00 EUR	2.340,00 EUR	1.800,00 EUR
up to 12.500,00 EUR	2.535,00 EUR	1.950,00 EUR
up to 15.000,00 EUR	2.730,00 EUR	2.100,00 EUR
up to 17.500,00 EUR	2.925,00 EUR	2.250,00 EUR
up to 20.000,00 EUR	3.120,00 EUR	2.400,00 EUR
up to 22.500,00 EUR	3.315,00 EUR	2.550,00 EUR
up to 25.000,00 EUR	3.510,00 EUR	2.700,00 EUR

up to 30.000,00 EUR	3.705,00 EUR	2.850,00 EUR
bis 35.000,00 EUR	3.900,00 EUR	3.000,00 EUR
up to 40.000,00 EUR	4.095,00 EUR	3.150,00 EUR
up to 45.000,00 EUR	4.290,00 EUR	3.300,00 EUR
up to 50.000,00 EUR	4.485,00 EUR	3.450,00 EUR

In the case of amounts in **dispute exceeding 50.000,00 €**, the fee for each co-arbitrator is calculated as follows:

3. For amounts more than 50,000.00 € up to 500,000.00 €  
a fee of 3,450.00 € plus 2% of the amount exceeding 50.000,00 €;
4. For amounts more than 500,000.00 € up to 1,000,000.00 €  
a fee of 12,450.00 € plus 1.4% of the amount exceeding 500,000.00 €;
5. For amounts more than 1,000,000.00 € up to 2,000,000.00 €  
a fee of 19,450.00 € plus 1% of the amount exceeding 1,000,000.00 €;
6. For amounts more than 2,000,000.00 € up to 5,000,000.00 €  
a fee of 29,450.00 € plus 0.5% of the amount exceeding 2,000,000.00 €;
7. For amounts more than 5,000,000.00 € up to 10,000,000.00 €  
a fee of 44,450.00 € plus 0.3% of the amount exceeding 5,000,000.00 €;
8. For amounts more than 10,000,000.00 € up to 50,000,000.00 €  
a fee of 59,450.00 € plus 0.1% of the amount exceeding 10,000,000.00 €;

9. For amounts more than 50,000,000.00 € up to 100,000,000.00 €  
a fee of 99,450.00 € plus 0.06% of the amount exceeding 50,000,000.00 €;
10. For amounts more than 100,000,000.00 €  
a fee of 129,450.00 € plus 0.05% of the amount exceeding 100,000,000.00 € up to an amount of 650,000,000.00 €; any amount exceeding the additional 650,000,000.00 € shall not affect the calculation of the fee.
11. If more than two parties are involved in the arbitral proceedings, the amounts of the arbitrators' fees pursuant to this schedule are increased by 20% for each additional party. The arbitrators' fees are increased by no more than 50% in total;
12. Upon filing of a counterclaim, the Appointing Committee of the DIS, if so requested by the arbitral tribunal and after having consulted the parties, may determine that the arbitrators' fees pursuant to Nos. 1) - 11) shall be calculated separately on the basis of the value of the claim and counterclaim.
13. In cases of high legal and/or factual complexity and in particular with regard to the time spent, the Appointing Committee of the DIS, if so requested by the arbitral tribunal and after having consulted the parties, may determine an appropriate increase of the arbitrators' fees of up to 50% of the fee pursuant to Nos. 1) - 12);
14. If a request for an interim measure of protection has been made to the arbitral tribunal pursuant to section 20, the arbitrators' fee shall be increased by 30% of the fee at the time of the request;

15. For the chairman of the tribunal and the sole arbitrator, fees are calculated by adding 30% to the fees pursuant to 3) to 14);
16. Reimbursement of expenses pursuant to Sec. 40 sub. 1 is calculated on the basis of such guidelines as are issued by the DIS in force at the time of commencement of the arbitral proceedings;
17. The amount of the provisional advance for the arbitral tribunal levied by the DIS Secretariat upon filing of the statement of claim pursuant to section 7 sub. 1 corresponds to the fees for a co-arbitrator pursuant to this schedule;
18. :
  - a) In the case of an amount in dispute up to 50,000.00 € the DIS administrative fee amounts to 2% of the amount in dispute; in case of an amount in dispute more than 50,000.00 € and up to 1,000,000.00 € the DIS administrative fee amounts to 1,000.00 € plus 1% of the amount exceeding 50,000.00 € in the case of the amount in dispute exceeding 1,000,000.00 €, the administrative fee amounts to 10,500.00 € plus 0,5% of the amount exceeding 1,000,000.00 €. The minimum DIS administrative fee is 350.00 €; the maximum fee is 40,000.00 €;
  - b) Upon filing a counterclaim, the amounts in dispute of claim and counterclaim are added for the purpose of assessing the DIS administrative fee. The DIS administrative fee for a counterclaim is calculated by deducting the DIS



administrative fee from the administrative assessed according to the increased overall amount in dispute;

- c) The minimum administrative fee for a counterclaim is 350.00 €, the maximum fee for claim and counterclaim is 60,000.00 €;
- d) If more than two parties are involved in the arbitral proceedings, the DIS administrative fee set forth in Nos. 18 a) – c) is increased by 20% for each additional party. The additional fee shall not exceed €15,000.00. The sum of the administrative fee calculated pursuant to Nos. 18 a) - c) and the additional fee to this No. 18 d) shall be the DIS administrative fee.
- e) Where the arbitral proceedings are terminated prior to the constitution of the arbitral tribunal, the DIS may, at its own discretion, decrease the DIS administrative fee calculated pursuant to Nos. 18 a) - d) by a maximum of 50% of such fee.

19. If a statement of claim, a counterclaim or any other written pleadings is submitted to the DIS in any language other than German, English or French, the DIS may arrange for a translation. The costs for such translation may be added to the DIS administrative fee levied by the DIS pursuant to 15).

The German Institution of Arbitration (die Deutsche Institution für Schiedsgerichtsbarkeit e.V.) advises all parties wishing to select a dispute resolution procedure for future disputes and for this purpose wishing to agree upon conducting the conflict

management proceedings pursuant to the DIS Conflict Management Rules already at the conclusion of the contract, to use the following conflict management agreement:

"With respect to all disputes arising out of or in connection with the contract (... description of the contract ...) and for whose resolution the parties have not yet agreed on a dispute resolution procedure, conflict management proceedings pursuant to the Conflict Management Rules of the German Institution of Arbitration (DIS) (DIS-KMO) shall be conducted with the purpose of selecting a dispute resolution procedure."

It shall be noted that an agreement on the conflict management proceedings pursuant to the DIS Conflict Management Rules may be concluded any time, also with regard to already existing disputes.

**Note:**

In Germany you do not have fees for Arbitration in the German Civil Code.

If Parties decide to have recourse to arbitration they also have to decide for the rules of arbitration. Either they develop them themselves or they select a dispute resolution procedure, for example from the German Institution of Arbitration (die Deutsche Institution für Schiedsgerichtsbarkeit e.V.). This is registered society and they provide the parties with Conflict Management Rules and also with a table for the fee for the chairman of the arbitral tribunal. Enclosed please find the example for this. But there are also other societies that provide different rules.

In the German Civil Code provides the parties with additional rules for the procedure if the parties didn't regulated single items.

## Mediation

Generally speaking, when there is no formal legal requirement that a particular kind of dispute or matter must be dealt with in Court, mediation is always permitted.

The most common areas for mediation are family law, inheritance law and commercial law.

On 26 July 2012, the Mediation Act (Mediationsgesetz) entered into force in Germany transposing into German law the European Mediation Directive (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008).

While the EU Directive provides only for cross - border civil and commercial disputes, the German Act covers all forms of mediation, irrespective of the form of dispute or the place of residence of the parties concerned.

It only establishes general guidelines, as mediators and parties concerned need significant scope for manoeuvre during the mediation process.

Mediators are independent and impartial persons, without decision - making power, who guide the parties concerned through the mediation procedure.

The Act deliberately avoids establishing a precise code of conduct for the mediation procedure.

However, it does set out a number of disclosure obligations and restrictions on activity, to protect the independence and impartiality of the mediator profession: moreover, legislation formally obliges mediators to maintain strict client confidentiality.

The Act promotes mutual dispute settlement by including a number of different incentives in the official procedural codes.

When parties bring an action in a civil Court, they will have to say whether they have already sought to resolve the issue via out - of - Court measures, such as mediation, and whether there are specific reasons for not considering this course of action.

The Court may furthermore suggest that the parties try to settle the conflict via mediation, or another form of out - of - Court settlement; if the parties refuse to apply this option, the Court may choose to suspend the proceedings.

In principle, a mediation agreement can be enforced with the assistance of a lawyer or notary.

Legal aid for mediation is not envisaged for the time being.

There is no legislation defining the professional profile of a mediator who is responsible for ensuring that he / she has the necessary knowledge and experience (through suitable training and further development courses) to reliably guide parties through the mediation process.

There is no set minimum age, and no requirement for example that a mediator must have followed a University - level course of study.

Mediator training is currently offered by associations, organisations, universities, companies and individuals.

Mediation is not free of charge; payment is subject to agreement between the private mediator and the parties concerned but there is no legislation governing fees for mediation, nor are there statistics on the costs.

# ITALY

## The Costs of Justice

The costs of justice are determined by the following items:

1. Costs of introducing the cause or process;
2. Lawyer's fees;
3. Taxation of the economic transaction determined by the judgment (for example: transfer of property, payment of sums, determination or termination of contract, etc.).

### Costs of introducing the cause or process

Proceeding costs (such as Court fees, bailiff fees, expertises, costs for enforcing the judgement) are provided by law (Presidential Decree of 30 May 2002, No. 115).

In order to introduce a litigation, one has to pay a pre-determined amount - proportionate to the value of the claim - called "Contributo Unificato" (C.U.), ruled by Article 9 of Decree 115/02.

It has replaced since then all the other costs which were requested for criminal, civil and administrative procedures.

It includes the payment of all stamp taxes, registration taxes, chancellery taxes and the expenses for the designation of a public officer during a trial.

The payment of the Contributo Unificato is required before the case is filed and it has to be paid by the party who enters the case, lodges the initial appeal or, in enforcement proceedings, or submits an application for assignment or sale.

Some particular proceedings, relating to the following subjects, are **exempted**:

- Judicial separations (provisions related to minors and proprietary relations between spouses)
- preventive proceedings;
- land registry proceedings,
- proceedings to enforce delivery and release,
- proceedings related to child maintenance payments,
- all proceedings concerning children (e.g. proceedings regarding parental responsibility)
- rules on competence and jurisdiction.



## Legal Aid

The right of defense is considered by Italian legal system as a universally recognized right, irrespective of the nationality of the person concerned or the income he has earned.

In order to enforce this principle, Italian law has established a Legal AID System that allows people without financial resources to benefit equally from legal assistance.

The right to defense is recognized by two fundamental documents:

- the Italian Constitutional Charter;
- the Treaty for the Constitution of the European Union.

Italian Constitution, Art. 24, states that everyone can take legal action for the protection of their legitimate rights and interests.

Defense is inviolable right in every state and grade of the proceedings.

People are assured of the lack of resources, with special institutions, to act and defend themselves in front at any jurisdiction.

The law determines the conditions and the ways for the correction of judicial errors.

In addition to being constitutionally recognized, the right to defense is also constitutionally guaranteed to those who do not have sufficient income and is regulated in Part III of Law 30 May 2002, no. 115 (about Costs of Justice).

European Constitution, Article II-107, regulates the right to an effective remedy and to an impartial judge.

Everyone whose rights and freedoms - guaranteed by Union law - have been violated, has the right to an effective remedy in front of a judge.

Everyone has the right to have his case been examined fairly, publicly and within a reasonable time by an independent and impartial judge, pre-established by law.

Everyone has the right to be counseled, defended and represented.

Those who do not have sufficient means are granted patronage at the expense of the state, if this is necessary to ensure effective access to justice.

In Italian law, Legal AID is provided for the criminal process, civil proceedings, administrative process, accounting process, taxation process and voluntary jurisdiction.

Legal AID is also set for the enforcement process, review processes, revocation, third party opposition, in the processes of application of security or prevention measures, where the assistance of the defense counsel or technical consultant is provided.

Admission to Legal AID System is valid for each degree and process status, also for all those processes, derivatives and incidents.

With the introduction in Italy of the institutes of "mediation" and "assisted negotiation", in some cases, as a condition of legality, access to justice risks to be compromise, as the Legal AID System.

## Legal Aid - tables

Law 30/07/1990 n. 217 D.P.R. 30/05/2002 n. 115	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>WHO</b>	<p>ITALIAN AND UE CITIZENS - EXTRA UE AND STATELESS CITIZENS ONLY IF CLEARLY IDENTIFIED</p> <p><u>CRIMINAL CASES</u>: charged, convicted, victims, injured, civil liability, injunctions and other preventative measures</p> <p><u>CIVIL FRAUD</u>.</p> <p><u>ADMINISTRATIVE CASES</u>: if not manifestly baseless claim, respondent</p> <p><u>IMMIGRATION</u>: as above; always automatic only for expulsion procedures</p>	<p>Extra UE citizens: REQUIRED BIRTHPLACE CONSULAR AUTHORITY CERTIFICATE OF FOREIGN EARNINGS</p>	<p>EXTRA UE CITIZENS "SANS-PAPIERS" (except expulsion procedures)</p> <p>PREVIOUSLY SENTENCED FOR ORGANIZED CRIMES OR DECLARED BELONGING TO CRIMINAL ASSOCIATIONS, LARGE AMOUNT OF NARCOTICS Unless assessed without means</p>	<p>Persons unable to prove their identity</p> <p>Failure to obtain consular certificate</p>
<b>CONDITIONS</b>	<p><u>TOTAL EARNINGS BEFORE TAXES AND ALSO IF NOT DECLARED OR ILLICIT INCOMES OF THE WHOLE FAMILY</u> (all permanent members of the household) <u>LESS THAN</u> € 11.528,41</p>	<p>CRIMINAL CASES: Added € 1.032,91 FOR EVERY FURTHER PERSON OF THE FAMILY</p> <p>CRIMINAL CASES: THE INCOME OF ANY MEMBER OF THE FAMILY WITH A CONFLICT OF INTEREST IS NOT COUNTED</p>	<p>NO INCOME LIMITS FOR VICTIMS OF Sexual violence Genital mutilation Domestic violence Stalking</p>	<p>Significant undeclared earnings</p> <p>Too low income level (out single employment pension)</p> <p>Advantage for tax evasion and false residency declaration</p>

Law 30/07/1990 n. 217 D.P.R. 30/05/2002 n. 115	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>WHAT</b>	CRIMINAL PROCEEDINGS ALTERNATIVE PUNISHMENT INJUNCTIONS  Evidential issues in PRIVATE CLAIMS ADMINISTRATIVE JUDGMENT TAX AND ACCOUNTING PROCEDURE VOLUNTARY JURISDICTION  EVERY PROCEDURE REGARDING MINORS	LEGAL EXPENSES RECOGNIZED ONLY AFTER FILING	Persons Sentenced for organized crime	EXCLUDED Legal counselling Legal assistance for detained persons Post judgment counselling
<b>HOW PROCEDURE</b>	<u>DEMAND TO THE            PROCEEDING MAGISTRATE</u> Self declaration on family composition and incomes, obligation to communicate variations during procedure  PRIVATE INITIATIVES: <u>previous check</u> of not manifestly baseless claim of the demand <u>by the BAR</u>	<u>AUTOMATIC ADMISSION:</u> Office designation MINORS persons admitted to PROTECTION PROGRAM EXPULSION NOT UE CITIZENS persons formally declared UNTRACEABLE  LEGAL EXPENSES ONLY AFTER JUDGMENT Only if Court decides and if compulsory payment by the client proved unsuccessful	<u>EXCLUSION OR            REVOCATION:</u> If evidence shows a higher standard of living or not compatible with declared income  Exceeding the income limits during the proceedings  Second lawyer appointed	Extraordinary fees resulting from undue Revenue inspections

Law 30/07/1990 n. 217 D.P.R. 30/05/2002 n. 115	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>EFFECTS</b>	ONLY LAWYER FEES AND EXPENSES, NO FEES OTHERWISE REQUIRED	<u>FREE CHOICE OF LAWYER</u> previously registered in list “ <i>ad hoc</i> ” if more than 2 years experienced and without disciplinary sanctions <u>TECHNICAL EXPERT</u> when Judge requires technical study or if later considered relevant	<u>AMOUNT FEES</u> decided by proceeding Magistrate <u>REDUCED PAYMENT</u> of a third or the ordinary amount  Not recognized expenses outside County	Single phase of proceedings can last several years  <u>Months</u> waiting for a judicial decision  <u>Years</u> waiting for an effective payment by the MINISTRY OF JUSTICE

## Lawyer's Fees

In the past, the lawyer's fee was determinate by law in an equal way for each of the parties.

This was a guarantee of the pair position of the parties in front of the Judge.

The fixed price system has been demolished to pursue liberalization.

Today the lawyer's compensation is determined by contract and influenced by the client's economic strength.

The result was to weaken the parity of the parties in the process:

- the strong part becomes stronger because it can pay less for its defender;

- the weak side becomes even weaker because it has no contractual strength with its defender.

Attorneys have become workers without pay security and they have lost economic and contractual power and jeopardized their independence.

There is a government bill to prevent excessive differences in the determination of the compensation compared to the parameters applied to the losing party's condemnation in the trial (D.M. 55/2014 - <http://www.consiglionazionaleforense.it/documents/20182/42522/DECRETO+10+marzo+2014%2C+n+55/f8a098ec-12f2-4989-9c5a-ec79b2db0a44>)

- Law Decree 27 November 1933, No. 1578, regarding the regulation on lawyers' profession;
- Italian Civil Code (articles 2229-2231);
- Italian Civil Procedure Code (articles 91-98);
- Ministry Decree 8 April 2004 No. 127;
- Lawyers Ethic Code/self-regulation Code adopted by the Lawyers National Association called CNF (Consiglio Nazionale Forense);
- Law 4 August 2006 No. 248.
- D.M. No. 55/2014.



## Civil process lawyer's Fees

	Justice of Peace			Court							
Value until	1.100,00 €	5.200,00 €	20.000,00 €	26.000,00 €	52.000,00 €	260.000,00 €	520.000,00 €	1.000.000,00 €	2.000.000,00 €	4.000.000,00 €	8.000.000,00 €
<b>Defense fee</b>											
Case study	65,00 €	225,00 €	405,00 €	875,00 €	1.620,00 €	2.430,00 €	3.375,00 €	4.388,00 €	5.704,00 €	7.415,00 €	9.640,00 €
Introduction of the case	65,00 €	240,00 €	335,00 €	740,00 €	1.147,00 €	1.550,00 €	2.227,00 €	2.895,00 €	3.764,00 €	4.893,00 €	11.450,00 €
Handling of the case	65,00 €	335,00 €	540,00 €	1.600,00 €	1.720,00 €	5.400,00 €	9.915,00 €	12.890,00 €	16.757,00 €	21.784,00 €	56.638,00 €
Determination of the case	135,00 €	405,00 €	710,00 €	1.620,00 €	2.767,00 €	4.050,00 €	5.870,00 €	7.631,00 €	9.920,00 €	12.896,00 €	30.177,00 €
<b>Total</b>	330,00 €	1.205,00 €	1.990,00 €	4.835,00 €	7.254,00 €	13.430,00 €	21.387,00 €	27.804,00 €	36.145,00 €	46.988,00 €	107.905,00 €
Injunction and precautionary	165,00 €	602,50 €		2.417,50 €	3.627,00 €	6.715,00 €	10.693,50 €	13.902,00 €	18.072,50 €	23.494,00 €	53.952,50 €
Forced sale of movable property	180,00 €	525,00 €		816,00 €	1.290,00 €	1.810,00 €	2.395,00 €	3.114,00 €	4.048,00 €	5.262,00 €	6.841,00 €
forced sale of real estate	212,00 €	715,00 €		1.080,00 €	1.645,00 €	2.300,00 €	3.026,00 €	3.926,00 €	5.104,00 €	6.636,00 €	8.626,00 €
	The justice of peace has jurisdiction over cases involving movable assets with a value not exceeding € 5,000.00, when the law are not attributed to the competence of other court The justice of the peace is also competent for cases of compensation for damage caused by the circulation of vehicles and boats, provided that the amount in dispute does not exceed € 20,000.00.										
<b>Introduction fee</b>											
Civil trial - 1st Degree	43,00 €	98,00 €	237,00 €	237,00 €	518,00 €	759,00 €	1.214,00 €	1.686,00 €	1.686,00 €	1.686,00 €	1.686,00 €
Civil trial – Appeal	64,50 €	147,00 €	355,50 €	355,50 €	777,00 €	1.138,50 €	1.821,00 €	2.529,00 €	2.529,00 €	2.529,00 €	2.529,00 €
Civil trial - Court of Cassation	86,00 €	196,00 €	474,00 €	474,00 €	1.036,00 €	1.518,00 €	2.428,00 €	3.372,00 €	3.372,00 €	3.372,00 €	3.372,00 €



## Administrative process lawyer's Fees

Value until	1.100,00 €	5.200,00 €	26.000,00 €	52.000,00 €	260.000,00 €	520.000,00 €	1.000.000,00 €	2.000.000,00 €	4.000.000,00 €	8.000.000,00 €
Cost of defense										
Case study	170,00 €	605,00 €	1.080,00 €	1.955,00 €	3.240,00 €	4.185,00 €	5.441,00 €	7.073,00 €	9.195,00 €	11.954,00 €
Introduction of the cause	170,00 €	540,00 €	875,00 €	1.350,00 €	1.820,00 €	2.430,00 €	3.159,00 €	4.107,00 €	5.339,00 €	6.941,00 €
Handling of the case	100,00 €	605,00 €	945,00 €	1.550,00 €	2.160,00 €	2.970,00 €	3.861,00 €	5.019,00 €	6.525,00 €	8.483,00 €
Determination of the cause	270,00 €	1.010,00 €	1.820,00 €	3.305,00 €	4.790,00 €	6.950,00 €	9.035,00 €	11.746,00 €	15.270,00 €	19.851,00 €
use of pre-trial	200,00 €	540,00 €	1.010,00 €	1.820,00 €	2.630,00 €	3.780,00 €	4.914,00 €	6.388,00 €	8.304,00 €	10.795,00 €
Sub total	910,00 €	3.300,00 €	5.730,00 €	9.980,00 €	14.640,00 €	20.315,00 €	26.410,00 €	34.333,00 €	44.633,00 €	58.024,00 €
lump-sum refund expenses	136,50 €	495,00 €	859,50 €	1.497,00 €	2.196,00 €	3.047,25 €	3.961,50 €	5.149,95 €	6.694,95 €	8.703,60 €
Total	1.046,50 €	3.795,00 €	6.589,50 €	11.477,00 €	16.836,00 €	23.362,25 €	30.371,50 €	39.482,95 €	51.327,95 €	66.727,60 €

<b>Introduction fee</b>	
Administrative Complaints	Contributo
Administrative litigation concerning the right of citizenship, residence, and entry into the territory of the State	300,00 €
Administrative appeals against the refusal of access to environmental information set forth in Legislative Decree no. 195/2005	0,00 €
Administrative complaints to enforce sentence or compliance of the sentence	300,00 €
Court actions to the Regional Administrative Courts and the Council of State	650,00 €
Proceedings provided for in Title V, Book IV of D'LGS n. 104/2010 (abbreviated rites related to special dispute)	1.800,00 €
Proceedings under Articles. 116 and 117 of the D'DECREE n.104 / 2010 (access to the records and administration silence)	300,00 €
Extraordinary appeals to the President of the Republic	650,00 €
Appeals pursuant to Art. 119 co. 1 letter. a) and b) of Legislative Decree no. 104/10	
when the value of the dispute is equal to or less than € 200,000	2.000,00 €
when the value of the dispute is between € 200,000 and € 1,000,000	4.000,00 €
when the amount in dispute exceeds € 1 million	6.000,00 €

## Tax process lawyer's Fees

		<b>Provincial Court (1° grade)</b>									
<b>Value until</b>		<b>1.100,00 €</b>	<b>5.200,00 €</b>	<b>26.000,00 €</b>	<b>52.000,00 €</b>	<b>260.000,00 €</b>	<b>520.000,00 €</b>	<b>1.000.000,00</b>	<b>2.000.000,00</b>	<b>4.000.000,00</b>	<b>8.000.000,00</b>
<b>Defense fee</b>											
	Case study	170,00 €	540,00 €	945,00 €	1.685,00 €	2.430,00 €	3.510,00 €	4.563,00 €	5.932,00 €	7.712,00 €	10.026,00 €
	Introduction of the cause	100,00 €	340,00 €	540,00 €	810,00 €	1.145,00 €	1.485,00 €	1.931,00 €	2.510,00 €	3.263,00 €	4.242,00 €
	Handling of the case	85,00 €	270,00 €	470,00 €	945,00 €	1.350,00 €	1.955,00 €	2.542,00 €	3.305,00 €	4.297,00 €	5.586,00 €
	Determination of the case	170,00 €	875,00 €	1.350,00 €	2.090,00 €	3.970,00 €	4.115,00 €	5.350,00 €	6.955,00 €	9.042,00 €	11.755,00 €
	<b>Total</b>	<b>525,00 €</b>	<b>2.025,00 €</b>	<b>3.305,00 €</b>	<b>5.530,00 €</b>	<b>8.895,00 €</b>	<b>11.065,00 €</b>	<b>14.386,00 €</b>	<b>18.702,00 €</b>	<b>24.314,00 €</b>	<b>31.609,00 €</b>
		<b>Regional Court (2 grade)</b>									
<b>Value until</b>		<b>1.100,00 €</b>	<b>5.200,00 €</b>	<b>26.000,00 €</b>	<b>52.000,00 €</b>	<b>260.000,00 €</b>	<b>520.000,00 €</b>	<b>1.000.000,00</b>	<b>2.000.000,00</b>	<b>4.000.000,00</b>	<b>8.000.000,00</b>
<b>Defense fee</b>											
	Case study	170,00 €	605,00 €	1.080,00 €	1.955,00 €	2.900,00 €	4.185,00 €	5.441,00 €	7.073,00 €	9.195,00 €	11.954,00 €
	Introduction of the cause	100,00 €	405,00 €	605,00 €	1.010,00 €	1.350,00 €	1.820,00 €	2.366,00 €	3.076,00 €	3.999,00 €	5.199,00 €
	Handling of the case	85,00 €	405,00 €	740,00 €	1.350,00 €	1.955,00 €	2.900,00 €	3.770,00 €	4.901,00 €	6.371,00 €	8.282,00 €
	Determination of the case	170,00 €	875,00 €	1.350,00 €	2.360,00 €	3.105,00 €	4.320,00 €	5.616,00 €	7.301,00 €	9.491,00 €	12.338,00 €
	<b>Total</b>	<b>525,00 €</b>	<b>2.290,00 €</b>	<b>3.775,00 €</b>	<b>6.675,00 €</b>	<b>9.310,00 €</b>	<b>13.225,00 €</b>	<b>17.193,00 €</b>	<b>22.351,00 €</b>	<b>29.056,00 €</b>	<b>37.773,00 €</b>

<b>Introduction fee</b>	
<b>Tax Process - provincial and regional tax commission</b>	
<b>Value</b>	<b>Introduction fee</b>
Value of up to € 2,582.28ino a € 2.582,28	30,00 €
Value of more than € 2,582.28 and up to € 5,000.00	60,00 €
Value of more than € 5,000.00 and up to € 25,000.00	120,00 €
Value of more than € 25,000.00 and up to € 75,000.00	250,00 €
Value of more than € 75,000.00 and up to € 200,000.00	500,00 €
Value greater than € 200,000.00	1.500,00 €

## Criminal process lawyer's Fees

		Justice of Peace	Preliminary investigations	Defense investigations	Preliminary hearing	Court	Member Court	Assizes	Court of Appeal	Court of Cassation
<b>Defense fee</b>										
	Study of the case	405,00 €	810,00 €	225,00 €	810,00 €	450,00 €	450,00 €	720,00 €	450,00 €	900,00 €
	Introduction of the cause	335,00 €	630,00 €	240,00 €	720,00 €	540,00 €	720,00 €	1.350,00 €	900,00 €	2.520,00 €
	Evidentiary phase	540,00 €	990,00 €	335,00 €	990,00 €	1.080,00 €	1.350,00 €	2.250,00 €	1.350,00 €	0,00 €
	Determination of the case	710,00 €	1.170,00 €	405,00 €	1.350,00 €	1.350,00 €	1.350,00 €	2.700,00 €	1.350,00 €	2.610,00 €
	<b>Total</b>	1.990,00 €	3.600,00 €	1.205,00 €	3.870,00 €	3.420,00 €	3.870,00 €	7.020,00 €	4.050,00 €	6.030,00 €

No Costs of introduction.

## Arbitration Lawyer's and court's Fees

					Arbitration									
Value until		€ 1.100,00	€ 5.200,00	€ 20.000,0	€ 26.000,0	€ 52.000,0	€ 260.000,0	€ 520.000,0	€ 1.000.000,0	€ 2.000.000,0	€ 4.000.000,0	€ 8.000.000,0		
<b>Defense fee (The lawyer)</b>														
	Case study	€ 65,00	€ 225,00	€ 405,00	€ 875,00	€ 1.620,00	€ 2.430,00	€ 3.375,00	€ 4.388,00	€ 5.704,00	€ 7.415,00	€ 9.640,00		
	Introduction of the case	€ 65,00	€ 240,00	€ 335,00	€ 740,00	€ 1.147,00	€ 1.550,00	€ 2.227,00	€ 2.895,00	€ 3.764,00	€ 4.893,00	€ 11.450,00		
	Handling of the case	€ 65,00	€ 335,00	€ 540,00	€ 1.600,00	€ 1.720,00	€ 5.400,00	€ 9.915,00	€ 12.890,00	€ 16.757,00	€ 21.784,00	€ 56.638,00		
	Determination of the case	€ 135,00	€ 405,00	€ 710,00	€ 1.620,00	€ 2.767,00	€ 4.050,00	€ 5.870,00	€ 7.631,00	€ 9.920,00	€ 12.896,00	€ 30.177,00		
	lump-sum refund expenses	€ 49,50	€ 180,75	€ 298,50	€ 725,25	€ 1.088,10	€ 2.014,50	€ 3.208,05	€ 4.170,60	€ 5.421,75	€ 7.048,20	€ 16.185,75		
	<b>Total</b>	<b>€ 379,50</b>	<b>€ 1.385,75</b>	<b>€ 2.288,50</b>	<b>€ 5.560,25</b>	<b>€ 8.342,10</b>	<b>€ 15.444,50</b>	<b>€ 24.595,05</b>	<b>€ 31.974,60</b>	<b>€ 41.566,75</b>	<b>€ 54.036,20</b>	<b>€ 124.090,75</b>		
	Injunction and precautionary				€ 2.780,13	€ 4.171,05	€ 7.722,25	€ 12.297,53	€ 15.987,30	€ 20.783,38	€ 27.018,10	€ 62.045,38		
	Forced sale of movable property				€ 816,00	€ 1.290,00	€ 1.810,00	€ 2.395,00	€ 3.114,00	€ 4.048,00	€ 5.262,00	€ 6.841,00		
	forced sale of real estate				€ 1.080,00	€ 1.645,00	€ 2.300,00	€ 3.026,00	€ 3.926,00	€ 5.104,00	€ 6.636,00	€ 8.626,00		
<b>Arbitration fee (The judgement)</b>														
	each arbitrator fee				€ 1.620,00	€ 4.050,00	€ 7.085,00	€ 16.200,00	€ 21.060,00	€ 27.378,00	€ 35.591,00	€ 46.268,00		
	reimbursement generic costs				€ 243,00	€ 607,50	€ 1.062,75	€ 2.430,00	€ 3.159,00	€ 4.106,70	€ 5.338,65	€ 6.940,20		
	<b>Total</b>				<b>€ 1.863,00</b>	<b>€ 4.657,50</b>	<b>€ 8.147,75</b>	<b>€ 18.630,00</b>	<b>€ 24.219,00</b>	<b>€ 31.484,70</b>	<b>€ 40.929,65</b>	<b>€ 53.208,20</b>		

## Registration Tax of the final decision

### i.e. Taxation of the economic transaction determined by the judgment

To understand the registration tax and therefore also the registration of judicial documents it is useful to remember that it is a tax of a LEGAL DOCUMENT, which goes to tax the transferred wealth.

This means that it is necessary to analyze in detail the effects of the DOCUMENT and we must consider with the same principle the nature of judgments and judicial acts, in order to ascertain whether the sentence is merely an assessment or if it has a certain effect of transfer of the wealth or goods.

So, according to Italian law a tax is due in order to register the Court decision.

It also concerns judicial authorities that only partially define the judgment, including executive injunctions, awarding and awarding orders.

The registration obligation applies to all parts of the process in solidarity, without any distinction between the losing party or the victorious party.

In the relations between the parties, however, things are different: at the end of the trial the costs are imposed by the Judge with a sentence against the losing party who must reimburse the winner for the anticipated expenses, including any payment of the tax register.

Depending on the procedural events, the judge can order the total or partial compensation of the expenses, as it can impose sanctions.

Case	
transfer of property	judgments that transfer or constitute real rights on immovable property: the same taxes established for the corresponding contract apply and therefore if the transfer is subject to VAT, a fixed registration fee of Euro 200.00 will be due while, in case the transfer is not subject to VAT, we apply 2% first home, 9% in all remaining cases and 12% agricultural land and related appurtenances in favor of subjects other than farmers and professional agricultural entrepreneurs, registered in their social security and welfare management.
assessment of property	judgments of assessment of property rights: 1%
payment of sum	judgments condemning the payment of sums or values, other benefits or the delivery of goods of any kind: 3%
rejected claim	judgments that do not provide for the transfer, condemnation or assessment of rights with a patrimonial content: € 168,00

resolution	judgments declaring the nullity or pronouncing the annulment of a deed, even if they are condemnatory to the return of money or assets, or the resolution of a contract: € 168.00
divorce	judgments concerning the dissolution or termination of the civil effects of marriage or personal separation, even if they are condemned to the payment of checks or assignments of assets, already forming part of communion between spouses or modification of such convictions or attributions: euro 168,00
other	approval judgments: € 168.00
administrative	judgments of the Council of State and regional administrative tribunals that define, even partially, the judgment, including the executive injunction orders, which are condemned to the payment of sums of money other than court costs: 3%

## Mediation

Mediation procedure might help litigants to reach an out of Court settlements in any dispute that concerns entitlements that the parties are free to renounce or transfer (diritti disponibili).

A system of civil and commercial mediation has been introduced in Italy by Legislative Order (decreto legislativo) n.28/2010 and in Ministerial Order (decreto ministeriale) n. 180/2010.

Mediation is in general term voluntary, though it may be suggested by a Judge or required by a contract between the parties.

According to Italian legislation, mediation is however compulsory for the parties in certain subjects in order to be later allowed to introduce a case in Court.

Mediation services are provided by public and private mediation organisations which are entered in a register kept by the Ministry of Justice and published on its website (<http://www.giustizia.it>).

A person wishing to become a mediator must satisfy the requirements laid down in Article 4 of Ministerial Order n.18/2010: in particular, they must hold a degree or diploma at least equivalent to a University degree following three years of study, or in the alternative be a member of a professional association or organisation and have completed at least two yearly refresher courses with training providers accredited by the



Ministry of Justice (and in the course of the twoyear retraining period they must have taken part as assisted trainees in at least twenty cases of mediation).

The training providers that issue certificates stating that mediators have completed the necessary training courses are public or private bodies accredited by the Ministry of Justice on condition that they meet stated standards.

The criteria that determine the mediation fee (indennità di mediazione) - including comprising the fee for initiating the procedure and the fee for mediation proper - are laid down in Ministerial Order n.180/2010.

The amounts are specified in Table A annexed to the Order.

They vary depending on the value in dispute.

Article 12 of Legislative Order n.28/2010 states that the record of the agreement - provided it is not contrary to public policy or it does not override rules of law - is to be approved, on application by either party, by the President of the lower Court (tribunale) in whose district the mediation organisation is based.

The approved record is an enforceable title for execution on property (espropriazione forzata), specific performance (esecuzione in forma specifica) or registration of a judicial mortgage (ipoteca giudiziale).

At present there is no public register of mediators, but the Ministry of Justice regularly publishes a list of the mediation organisations to which the individual mediators belong.

Members of the public can determine which mediators are members of a mediation organisation by asking for specific information from the office at the Ministry which supervises the mediation organisations' activities; the office can be contacted via the Ministry's website.

# THE NETHERLANDS

## Legal Aid

### *Income limit in civil cases.*

See Article 12(1) in conjunction with Article 34 of the Legal Aid Act (WRB – Wet op de rechtsbijstand).

### *Income limit for defendants in criminal cases*

Legal aid is free of charge where a legal representative is assigned by the court (Article 43 of the WRB). In other cases, the Legal Aid Board may assign counsel to persons eligible to receive representation under the criminal Code or the Code of Criminal Procedure (see Article 44(1) of the WRB). Under Article 35 of the WRB, anyone who is assigned legal aid must pay a contribution in proportion to their income.

### *Income limit for victims in criminal cases*

Under Article 44(5) of the WRB legal aid for victims of sexual offences or violent crimes is free of charge, regardless of the victim's ability to pay, if a case is brought and if the victim is eligible for compensation under Article 3 of the Law on the Criminal Injuries Compensation Fund.

### *Other conditions for granting legal aid to defendants*

Legal aid is not granted in criminal cases if:

- under the law that has been broken, a fine is likely to be imposed that is low in proportion to the defendant's income. See Article 12(2)(c) of the WRB.

- Article 5(1) of the Decree on Legal Aid and Assignment Criteria states that no legal aid is granted in criminal cases that are to be heard by a sub-district court (except for the purposes of consultation). Paragraph 2 of that article provides that, by way of exception, counsel may be assigned where this is justified because the person requesting aid has substantial interests at stake or where the particular facts or legal complexity of the case so require.

Law: The Legal Aid Act ('Wet op de Rechtsbijstand') and additional regulations	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>WHO</b>	<p>In general legal aid is available for natural persons only.</p> <p>Anyone subject to Dutch law, resident in the country or with a legal problem which bears sufficient connexion with the Dutch legal order.</p> <p>Legal aid is available in criminal, immigration, asylum, administrative and certain categories of civil cases.</p> <p>Legal aid is available for judicial assistance in cases before courts, administrative tribunals and – depending on the severity of the case – disciplinary tribunals or certain complaints bodies. Legal aid may also be available for legal advice but only if legal proceedings are imminent.</p>		<p>In general legal aid in civil cases is not available for legal problems arising out of business-related activities by the person applying for legal aid (for example business-related contract disputes of self employed clients).</p> <p>Legal aid is not available for general legal advice (e.g. in a non-contentious situation, or is a situation in which there is not (yet) a legal conflict).</p> <p>Legal aid is not available if an applicant is deemed 'self-reliant' and/or the conflict may be solved without a lawyer's assistance (e.g. filling out social –security forms, writing simple complaints, etc.) – to be determined by the Legal Aid Board.</p>	<p>Confining legal aid to assistance in judicial proceedings misses the fact that many clients are not 'self-reliant' when it comes to solving their increasingly complex legal and bureaucratic problems. It also encourages litigation (which is compensated) in many situations that otherwise could have been solved with good legal advice on how to avoid litigation (which is not compensated).</p>

Law: The Legal Aid Act ('Wet op de Rechtsbijstand') and additional regulations	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>CONDITIONS</b>	<p><u>Clients</u> Gross monthly income of all permanent members of the household above the age of 18 years and capital.</p> <p>In 2017 the maximum income to apply for legal aid is € 25.600 for a single household, to € 36.100 for couples or singles with children.</p> <p>Children under 18 qualify with no financial test.</p> <p>Gross monthly income of all permanent members of the household above the age of 18 years and assets. The applicant's assets must not exceed € 21,330 (2017). Applicants over 65 years of age are allowed higher assets.</p> <p>The reference year lies two years before the year of application. A client can request te Board to change the reference year, if the applicant's income and/or assets in the year of application has decreased substantially compared to that in the reference year. This holds if the applicant's reference-year income and/or assets would not make him eligible for legal aid, whereas his present income and/or assets will.</p>	<p><u>Lawyers</u> To be entitled to accept legal aid cases, private lawyers need to be registered with the Legal Aid Board and to comply with a set of quality standards. These standards are set by the Bar. For some fields of law – criminal, mental health, asylum and immigration law, youth, family law – additional terms, set by the Legal Aid Board, apply. The lawyer must both have adequate expertise and sufficient experience in that particular field.</p> <p><u>Case</u> The case must be serous enough and there must be a reasonable chance of success.</p>		<p>The income threshold is widely viewed as too low, thus excluding a very large group of low to middle income who often cannot afford legal advice either.</p>

Law: The Legal Aid Act ('Wet op de Rechtsbijstand') and additional regulations	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<p><b>WHAT</b></p>	<p>Legal aid covers lawyers' fees (in the great majority of cases in the form of a flat-rate compensation); in complex cases extra fees may be paid – mostly in complex and large criminal cases.</p> <p>Clients on legal aid pay significantly lower court fees;</p> <p>Legal aid also covers the bailiffs fees (e.g. when serving a writ or executing a judgement) and – subject to limitations – costs of translators.</p>	<p>Lawyers' fees are only paid by Legal Aid Board after the case has finished.</p>		<p>Court proceedings may take years, payment will however only take place after the end of the case.</p>

Law: The Legal Aid Act ('Wet op de Rechtsbijstand') and additional regulations	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>HOW PROCEDURE</b>	<p>The Legal Services Counters ('Juridisch Loket') act as what is commonly known as the 'front office' (primary help). Legal matters are being clarified to clients and information and advice given. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. If necessary, clients can also be referred to other professionals or support agencies.</p> <p>Lawyers (and mediators) submit applications to the Legal Aid Board ('Raad voor Rechtsbijstand') on behalf of the client. The board is an independent governing body with a public task, instituted by the Minister of Security and Justice</p> <p>If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the LAB to provide their services to clients of limited means. Generally they</p>	<p>The costs of legal aid are partly covered by a contribution from the client. This personal contribution ('eigen bijdrage'). The height of this contribution depends on the income and capital of the client. In 2017, the lowest personal contribution is € 143, the highest € 823.</p> <p>In divorce related cases the personal contribution is higher, from € 340 to € 849.</p> <p>In case of relatively simple legal problems, lawyers receive a certificate for a standard three-hour legal advice fee, also encompassing a personal contribution. This is called a minor certificate ('lichte adviestoevoeging').</p> <p>Certain categories of clients are exempted from individual contributions. This applies to all cases where people have been deprived of their freedom against their will. 'Proven Have-nots' (e.g. homeless clients) and asylum seekers are also exempted from paying an individual</p>		<p>Personal contributions have to be collected from client by the lawyer. This poses a significant administrative burden and collection risk.</p>



Law: The Legal Aid Act ('Wet op de Rechtsbijstand') and additional regulations	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
<b>EFFECTS</b>	The system (still) provides fairly just and broad access to legal aid and consequently to justice and the law.		The system has serious flaws when it comes to civil cases between natural persons and (large) companies. Legal aid is often refused on the grounds that the client should be able to solve the case without legal assistance (for example by submitting a complaint to a low threshold complaints committee, or because the financial interest is deemed too low). Even if legal aid is granted, the fees are generally too low, even lower than in the example given in the next column.	<p>Legal aid lawyers are relatively underpaid. For example a regular administrative case before a district court in a social security case will normally involve 15 to 20 hours of work. The flat-rate compensation for such a case is approximately € 1.050 – including 21% VAT (approx. € 870,00 ex VAT). Effectively the lawyer thus works for a fee of € 58 - € 43,5 per hour. This makes it very difficult to earn a reasonable income while maintaining a high level of quality.</p> <p>Consequently, less and less young lawyers choose a career in firms that work on a legal aid basis.</p>

## Lawyer's Fee

With the exception of fees payable to those offering subsidised legal aid, fees in the Netherlands are not regulated.

### *Fixed costs for litigants in civil cases.*

Under the Act on Fees for Civil Proceedings (WTBZ – Wet tarieven in burgerlijke zaken), parties in civil proceedings are required to pay registration fees.

### *Fixed costs for litigants in criminal cases.*

There are no fixed costs for litigants in criminal proceedings under Dutch criminal law.

### *Fixed costs for litigants in constitutional cases.*

Under the Dutch legal system, there is no provision for referring constitutional matters to the courts.

### *Stage in civil proceeding when litigants have to pay fixed costs*

In civil proceedings, a fixed charge has to be paid by each claimant as soon as a case is referred to a court and by each defendant who appears before the court. Each court levies a fixed fee for filing a claim, defence statement, or a petition of any other kind than those referred to in Article 14(3). Non-payment or late payment of this fee has no consequences in the main proceedings.

### *Stage in criminal proceeding when litigants have to pay fixed costs.*

The same arrangements apply as for civil proceedings.

Prior information to be provided by legal representatives.

*Rights and obligations of the parties.*

The law says nothing on this subject. Rights and obligations can, however, be derived from the 1992 Code of Conduct for Advocates (for more information, see the Dutch Bar Association's website) and the Code of Conduct for EU Advocates. See, for example, rule 26 of the Code of Conduct for Advocates, which requires lawyers to discuss the financial implications with the client whenever they take on a case and to give details of the manner and frequency of invoicing. Article 3.7.1. of the Code of Conduct for EU Advocates also states that lawyers should always seek to achieve the most cost-effective resolution of a client's dispute and should advise the client at the appropriate stage as to the desirability of seeking a settlement and/or having recourse to alternative dispute resolution procedures.

*Costs incurred by the winning party.*

In civil cases, the winning party may incur the following costs:

- legal aid (e.g. lawyers' fees)
- remuneration or compensation of witnesses or experts
- travel and accommodation expenses, and
- other legal and non-legal expenses.

*Costs incurred by the losing party*

The losing party incurs the same costs as the winning party, but may also be ordered by the judge to bear the costs incurred by the winning party.

*Cost-free court proceedings.*

Defendants do not have to pay any fixed costs in cases that are to be heard by a sub-district court or tenancy tribunal.

When does the losing party have to pay the winning party's costs?

The decision on which party has to bear the costs of proceedings is taken by the court on a flat-rate basis (i.e. not on the basis of costs actually incurred).

*Experts' fees.*

Experts' fees vary: You can find appropriate information in the Decree of 28 August 2012 amending the 2003 Decree on tariffs in criminal proceedings. That Decree amended the 2003 Decree on tariffs in criminal proceedings.

*Translators' and interpreters' fees.*

Fees for translation and interpreting are set by the Ministry of Justice:

Interpreters are paid a rate of EUR 43.89 per hour. Additionally court interpreters are paid a one-off fee of EUR 20.23 to compensate travelling and waiting time (fixed fee). Travel costs are reimbursed at the rate of EUR 1,55 per kilometre.

Translations from or into French, German and English are remunerated at a rate of EUR 0.79 per line. A rate of EUR 0.14 per word (target language) applies to other languages and of EUR 0.28 per character applies to oriental languages.

## Costs of Arbitration and Mediation (ADR)

Legislation Arbitration is regulated in articles 1020 – 1077 of the Code of Civil Procedure (CCP). The articles 1020 – 1073 CCP are only applicable if the place of arbitration is situated within the Netherlands (article 1073 CCP). According to the Dutch law, parties may agree to submit their dispute to an arbitrator regardless of whether the dispute has arisen or may arise. In addition, according to article 1020 CCP this can be done contractual or non-contractual.

As in the former Act, Dutch arbitration law does not deal with the recovery of legal fees or costs. Alternatively, it is possible for an arbitration agreement may state the allocation of costs.

In the absence of such agreement the arbitrators can decide this allocation, however it is normal practice for the arbitrators to decide the losing party bears the costs of arbitration, including the legal fees of the other party. In reality there is a reasonable limit placed on the amount payable by the losing party, resulting in the possibility that the winning party cannot recover all costs incurred.

### *Cost of mediation.*

Mediation in the resolution of civil disputes is not provided free of charge.

There are no specific statutory provisions regarding mediation in the Netherlands (yet). However, in 2004 the (former) Minister of Justice (J.P.H. Donner) sent a policy letter to the parliament, which is a careful step towards instituting mediation.<sup>110</sup> On June 21,

2011, the Dutch House of Representatives agreed to the adjustment of Book 3 of the Civil Code and the Code of Civil Procedure to the European mediation Directive regarding certain aspects of mediation in civil and commercial affairs.

On the other hand, in 1993 the NMI ('Nederlands Mediation Instituut') was established. The institute aims to improve the acquaintance, the usage and quality of mediation in the Netherlands. The NMI has a leading role in the Dutch mediation practice. The NMI was the initiative of counsels, lawyers and legal scholars. Soon after, other mediation institutes emerged, notably the ACB ('ADR Centrum voor het Bedrijfsleven').<sup>112</sup> The regulations of the NMI and the ACB, as well as those of the NAI ('Nederlands Arbitrage Instituut') are now a foundation for mediation in the Netherlands.<sup>113</sup> As a result of these developments, the Dutch government established the 'Platform ADR', whose task was to advise to what extent mediation could function as an alternative or supplement to the normal legal procedure.

Costs depend on the type of case. Some procedures are complex and time-consuming and therefore more expensive. There are also cases where the parties are advised to involve specialised lawyers in the mediation. Sometimes referral to a mediator can prompt the parties to resolve their differences by themselves, which is a sign that mediation can work to prevent the escalation of a dispute.

If the parties have sufficient financial means, they have to meet the costs of mediation themselves. The income threshold for eligibility for a state-subsidised lawyer or mediator is:

For married couples, registered partners or those living together: €35 200 per year.

For single people: € 24 900 per jaar.

In addition to these financial limits, legal aid is not available to parties with assets above a certain value requiring disclosure to the tax authorities. These include a second home, other real estate, savings, liquidity, assets, etc. The exact value for married couples, registered partners or people living together is determined on the basis of data from the tax authorities.

If the parties' means fall below the applicable thresholds, the state will contribute to the cost of a lawyer or mediator. However, the state will never pay the full amount. Each party must make a financial contribution. This amounts to €51 for 0 - 4 hours and €102 for 5 or more hours (per mediation, not per party). The contribution for a lawyer is higher. These figures are given by way of an indication and are not legally binding.

(The exact amounts can be found on the website of the Legal Aid Council)

# POLAND



## Legal Aid

There is no unified system of legal aid in Poland and no specific legal aid legislation to address its provision in a systemic and organized manner. The decision to grant legal aid is always taken by a judge. The judge decides whether the request for legal aid should be granted and if so, which lawyer should be appointed. There is no separate or specialized group of lawyers acting in legal aid cases: the judge appoints a lawyer from a list provided by the local bar associations.

Exemption from court fees may be requested by an individual who submits a statement that he/she is unable to cover them without detriment to the support necessary for himself/herself and the family. The court may also grant exemption from court fees to a business entity if it has demonstrated that it does not have sufficient means to pay such costs. The costs of legal aid, incurred by the State Treasury, include regulated fees and essential, substantiated expenses.

A natural person may demand the exemption from court fees, after making a declaration, that it's unable to bear them without detriment to necessary maintenance for itself and a family.

A statement, covering detailed data on family situation, assets, income, regular source of income of a person applying for the exemption from court fees, should be also made and attached to the application for exemption from court fees.

## Costs of Justice

### Civil Court Costs

The sources of court cost are not subject to the court's discretionary decision, but the rules of determination are stipulated in numerous legal acts. The most important legal act is the Act on Court Fees.

It is difficult to determine an average amount of the average court cost of a proceeding, because it depends on the type of a proceeding and on a particular case. The Act on Court Fees provides for the following sort of fees: permanent fee, proportional fee, basic fee.

A court fee should be paid upon filing a pleading. In general, the cost of bringing an action to the court depends on the type of proceeding. In litigation cases most often is a relative fee of 5% of the value of the subject of dispute, but not less than 30,00 zł and more than 100.000,00 zł.

Please note that, in principle, the fee for **appeal** is the same as for the first instance.

### Civil Lawyer's Fees

There are regulations specifying rates for calculating the reimbursement of lawyers fees to the winning part, and for calculating remuneration for attorneys ex officio. Fees amount depend on the nature of litigation (look at the example below). The court sets

mostly only minimum fees. In complex cases, the court may set higher fees. The Polish legal system does not provide any regulation determining the lawyer's fee above the minimum fee. The prices for legal service are calculate between a lawyer and his client, it is mean that the final lawyers fees depend also on experience and position of given lawyer.

Example:

When the lawyers fees depend on the amount in dispute, the lawyer fees is:

1. 120 zł - when the amount in dispute is below 500,00 zł;
2. 360 zł - when the amount in dispute is between 500,00 zł and 1500 zł;
3. 1200 zł - when the amount in dispute is between 1500,00 zł and 5000,00 zł;
4. 2400 zł - when the amount in dispute is between 5000,00 zł and 10000,00 zł;
5. 4800 zł - when the amount in dispute is between 10000,00 zł and 50000,00 zł;
6. 7200 zł - when the amount in dispute is between 50000,00 zł and 200000,00 zł;
7. 14400,00 zł - when the amount in dispute is above 200000,00 zł.

There is no tax over the decision.

## Criminal Court Costs

The criminal proceedings cost are paid by State Treasury. However, the court determines who and what part of fee will pay. Some of these fees must be paid at the beginning of bringing a letter to the court, and some shall be specified in the decision closing the proceedings.

Entity liable to pay the costs of criminal proceedings can be charged, convicted, and in some cases the prosecutor.

Sentenced to imprisonment must pay from 60 to 600 zł depending on the judgment of the court . In case sentenced to 3 months imprisonment , the fee is 60 zł . Sentencing to imprisonment for 2 years – 300 zł for 5 years 400 zł and 600 PLN in case of conviction to imprisonment for 15 years or 25.

In the case of fines, convicted must pay a fee of 10 percent her height, but newer less than the amount of 30 zł . Costs increase to 20 percent high of fines if convicted at the same time he heard the sentence of imprisonment.

In the case of conditional discontinuance of the case , the defendant is obliged to pay from 60 to 100 zł .

In cases of private prosecution, in the case of an acquittal of the accused the court imposes private prosecutor fee in the amount of 60 zł to 240 zł . The court may refrain from imposing the penalty or reduce its size if the accused has not been acquitted of all charges against him .

It should be mentioned that the private indictment it must be paid charged 300 zł.

The proceeding fee for appeal is the same as for the first instance, with one exception - when the appeal is not unfounded the fee is 30 zł.

## **Civil Lawyer's Fee**

The same regulation like in civil law, it is mean that legal system does provide only the minimum laweyrs fee and the final prices for legal service are calculate between a lawyer and his client.

The minimum laweyrs fees denends on the kind of court case. The lower fees is 360,00 zł and the highest is 1.200,00 zł.

There is no tax on the decision.

## **Administrative Court Costs.**

The cost of the proceedings in the administrative courts.

The relative or fixed fee from the writings of initiating proceedings in the administrative court depend on complaint. In case, the subject of appeal are amounts should be paid relative fee, in other cases is taken by the court fixed fee.

The relative fee is:

- to 10,000 zł - 4 % of the value of the disputed, but not less than 100 zł,
- from 10.000 zł to 50,000 zł - 3% of the value of the disputed, but not less than 400 zł,
- from 50,000 zł to 100,000 zł - 2% of the value of the disputed, but not less than 1,500 zł,
- from 100,000 zł to 1 % of the value of the disputed, but not less than 2,000 zł and not more than 100,000 zł,

Fixed fee is:

1. complaints against decisions issued in administrative proceedings, enforcement and security - 100 zł,
2. complaints of acts or activities of the public administration on the rights or obligations under the law - 200 zł,
3. complaints against acts of territorial self - government - 300 zł,
4. complaints about the inactivity of public administration - 100 zł,
5. complaint against the provincial administrative courts - 100 zł,
6. tax proceeding – 500 zł,
7. customs proceeding – 500 zł,

The proceeding fee for appeal against the decision is half fee as for the first instance.

There is no tax on the decision.

## Administrative Lawyer's Fees

The same regulation like in civil law, it is mean that legal system does provide only the minimum laweyrs fee and the final prices for legal service are calculate between a lawyer and his client.

Example:

When the lawyers fees depend on the amount in dispute, the lawyer fees is:

1. 120 zł - when the amount in dispute is below 500,00 zł;
2. 360 zł - when the amount in dispute is between 500,00 zł and 1500 zł;
3. 1200 zł - when the amount in dispute is between 1500,00 zł and 5000,00 zł;
4. 2400 zł - when the amount in dispute is between 5000,00 zł and 10000,00 zł;
5. 4800 zł - when the amount in dispute is between 10000,00 zł and 50000,00 zł;
6. 7200 zł - when the amount in dispute is between 50000,00 zł and 200000,00 zł
7. 14400,00 zł - when the amount in dispute is above 200000,00 zł.

## Fiscal Court Costs

Under Article 264 of the Act of August 29, 1997 . The Tax Ordinance Act (consolidated text Journal of Laws of 2005 . No. 8, pos. 60) hhe costs of the proceedings before the

tax authorities (as a rule) shall be borne by the State Treasury, state, county or municipality. However, if costs have increased due to the fault of the taxpayer in which the proceedings are pending, the tax authority is entitled to charge him the additional costs.

## **Fiscal Lawyer's Fees**

The legal system does not provide any regulation determining the lawyers fee. The prices for legal service are calculate between a lawyer and his client.

There is no tax on the decision.

## **Mediation**

The cost of mediation is borne by the parties. It is usually paid in half, unless the parties agree otherwise.

In mediation proceedings initiated under a court order, the mediator's remuneration in non-property related cases is PLN 150 for the first mediation meeting, and PLN 100 for each subsequent meeting (in total: max. PLN 450). If the proceedings relate to property rights, the remuneration of a mediator is 1% of the amount in dispute (no less than PLN 150 and no more than PLN 2000 for the whole mediation). Mediator will also be reimbursed for expenses incurred in carrying out the mediation, including room rental fee of PLN 70 per meeting. The VAT will be added to costs of mediation.



Regardless of result of the case, the court may order a party to pay costs caused by an unreasonable refusal to participate in the mediation previously agreed with the party.

If there is a settlement signed as a result of mediation, the party will be reimbursed for 75% of the court fee paid when bringing the case to court.

In the case of mediation initiated under a court order, the remuneration of a mediator and reimbursement of his/her expenses result from pricing of the mediation centre concerned or the parties agree on it together with the mediator before mediation.

The legal system does not provide any regulation determining the lawyers fee. The prices for legal service are calculate between a lawyer and his client. There is no tax on the decision.

## Arbitration

Arbitration may be more expensive and its price depends on the system chosen.

The proceeding before the **Arbitration Consumer Court** are free of charge, but the parties have to cover the costs of appointing an expert or ordering an expert's study. That fee reimbursed to the party that wins the case.

In the case of proceeding before the **Arbitration Consumer Court at the Office of Electronic Communications** (UKE) the fee is approximately 100 zł.

**The Banking Arbitrator** requires a fee for consumer is 250 zł and for non-consumer depend on the value of the subject of dispute.

The cost of proceeding before **Insurance Ombudsman** depend on the value of the subject of dispute and the fee is also determined by the arbitrator. It cannot be less than 100 zł if dispute is examined by one arbitrator or 350 zł when a dispute is examined by a panel of three arbitrators. There is no maximum fee.

The legal system does not provide any regulation determining the lawyer's fee. The prices for legal service are calculated between a lawyer and his client. There is no tax on the decision.

# ROMANIA

## Legal AID in Romania

Legal aid is granted:

- when fixed or overall estimated costs of the trial might restrict constitutional right to effective access to justice;
- when right to access to justice might be restricted due to differences in costs of living between the Member State of residence and Romania;
- in case of minor, interned in a re-education centre or an educational medical institution, arrested or held in custody in the context of other criminal case, medically interned (or receiving compulsory medical treatment), incapable of conducting his or her own defence.

The following claims are legally exempt of any Court costs: all claims relating to the protection and promotion of children's rights, guardianship, trusteeship, assistance given to seriously mentally ill persons, claims relating to legal and contractual maintenance obligations and all claims relating to adoption.

A defendant who has admitted the plaintiff's claim at the first hearing need not pay the judicial expenses, unless he or she was officially notified by the bailiff through the specialised prior - to - judgment procedure, previously presented above.

Expenses necessary for the performance of procedural acts, the administration of evidence, the maintenance of material means of evidence, lawyers' remuneration, as

well as any other expenses related to criminal trials are covered by the sums forwarded by the State or paid by the parties.

In case of conviction, the defendant must cover the judicial expenses incurred by the State, with the exception of expenses for interpreters appointed by the judicial bodies, and in cases in which free legal aid has been granted.

In case of acquittal of the criminal trial in Court, the judicial expenses of the State are paid by: (a) the victim, to the extent to which they were caused by him/her; (b) the civil party whose civil claims were totally rejected, to the extent to which the expenses were caused by this party; (c) the defendant, when, even if acquitted, he/she was still obliged to pay damages.

In case of cessation of the criminal trial in Court, the judicial expenses of the State are paid for by (a) the defendant, if the replacement of criminal responsibility has been ordered or there is reason for non-punishment; (b) both parties, in case of reconciliation; (c) the victim, in case the complaint is withdrawn or was tardily submitted to Court.

In case of amnesty, prescription or withdrawal of the complaint, as well as in the case of existence of a cause for non-punishment, if the defendant demands the continuation of the criminal trial, the judicial expenses may be covered by the victim or the defendant, depending on other connected law provisions. In all other cases, the State pays for its own judicial expenses.

<p>Emergency Ordinance 21/04/2008 n. 51 and Law 07/06/1995 n. 51</p>	<p>RULE</p>	<p>SPECIFICATIONS</p>	<p>EXCLUSIONS</p>	<p>PROBLEMS</p>
<p>WHO</p>	<p><b>ANY INDIVIDUAL WHO HAS THE DOMICILE/HABITUAL RESIDENCE IN ROMANIA/ ANY EU MEMBER STATES</b></p> <p><b>INDIVIDUALS WITHOUT DOMICILE/HABITUAL RESIDENCE IN ROMANIA/EU MEMBER STATES</b> – under specific conditions</p> <p><b>JUDICIAL PROCEDURES:</b> CIVIL, COMMERCIAL, ADMINISTRATIVE, EMPLOYMENT AND SOCIAL INSURANCE CASES, OTHER CASES, <u>EXCEPTING CRIMINAL CASES</u></p> <p><b>EXTRAJUDICIAL PROCEDURES:</b> before the public authorities and institutions, other than judicial.</p>	<p><b>INDIVIDUALS WITHOUT DOMICILE/HABITUAL RESIDENCE IN ROMANIA/EU MEMBER STATES</b> –As long as a treaty is in effect, a treaty which contains legal stipulations concerning international access to justice, between Romania and the citizen’s state/state in which the individual inhabits.</p> <p><b>INDIVIDUALS WITHOUT DOMICILE/HABITUAL RESIDENCE IN ROMANIA/EU MEMBER STATES</b> – in the absence of a treaty spoken above, the facilities of an international access to justice can be provided only by international courtesy subject to reciprocity.</p> <p>THE DOCUMENTS MUST BE TRANSLATED IN ROMANIAN</p> <p>The Dean may decide to grant free assistance by a lawyer even in criminal matters.</p>	<p><b>INDIVIDUALS WITHOUT DOMICILE/HABITUAL RESIDENCE IN ROMANIA/UE MEMBER STATES</b> – in the absence of a treaty which contains legal stipulations concerning international access to justice and also in the absence of international courtesy subject to reciprocity</p>	<p>Encouraging for false residency declaration.</p> <p>The legal aid is not granted in criminal cases, excepting the legal aid provided by the lawyers under specific conditions.</p>

<p><b>Emergency Ordinance 21/04/2008 n. 51 and Law 07/06/1995 n. 51</b></p>	<p><b>RULE</b></p>	<p><b>SPECIFICATIONS</b></p>	<p><b>EXCLUSIONS</b></p>	<p><b>PROBLEMS</b></p>
<p><b>CONDITIONS</b></p>	<p>The individual doesn't afford/ doesn't have the necessary means to initiate a case law and to support his family simultaneous</p> <p>Amount of Legal Aid provided by year ≤ 10 total earnings before taxes</p>	<p>Earnings after taxes per family member 2 months before requesting legal aid &lt; <b>66, (6) € (300 RON)</b> [?] 100 % legal aid provided</p> <p>Earnings after taxes per family member 2 months before requesting legal aid &lt; <b>133, (3) € (600 RON)</b> [?] 50 % legal aid provided</p>	<p><b>NO INCOME LIMITS FOR CASES EXPRESS STIPULATED BY A SPECIAL LAW</b> as a protection measure regarding special circumstances as minority, disability (handicap) and so on.</p>	<p>The limits of the earnings conditioning the legal aid are very low. The legal aid is granted in a few cases.</p> <p>Significant undeclared earnings</p> <p>The death of the applicant revokes the legal aid</p> <p>Exceeding the income limits during the proceedings</p> <p>Encouraging the tax evasion</p>

<b>Emergency Ordinance 21/04/2008 n. 51 and Law 07/06/1995 n. 51</b>	<b>RULE</b>	<b>SPECIFICATIONS</b>	<b>EXCLUSIONS</b>	<b>PROBLEMS</b>
<b>WHAT</b>	<p>The legal aid consists in granting consultations, formulation of applications, petitions, complaints and in assisting and representing the applicant before the courts and before the public authorities and institutions.</p>	<p>The legal aid can be granted separately or cumulatively in any of its forms.</p> <p>The beneficiary of the legal aid who lose the case can not be forced to return the judicial expenses paid for him by the state.</p>	<p>The legal aid will be rejected if the court finds that the applicant has hidden the truth in bad faith.</p>	<p>EXCLUDED</p> <p>Post judgment counselling</p> <p>The extrajudicial aid covers only the lawyer fees.</p>



<p><b>Emergency Ordinance 21/04/2008 n. 51 and Law 07/06/1995 n. 51</b></p>	<p><b>RULE</b></p>	<p><b>SPECIFICATIONS</b></p>	<p><b>EXCLUSIONS</b></p>	<p><b>PROBLEMS</b></p>
<p><b>HOW PROCEDURE</b></p>	<p>Addressing a petition to the Court (the same Court which hears the case in which the legal aid is requested)</p> <p>Written application [?] content: trial object, I.D. of applicants family and applicant incomes, providing documents proving the incomes</p> <p>Self declaration on any legal aid requested in the last 12 months</p> <p>The legal aid regarding the payment of the expert, translator, interpreter and bailiff fees and of the state fees is decided by the judge</p> <p>The legal aid regarding the payment of the lawyer fees is decided by the Dean of the Bar which belongs the lawyer</p>	<p>Legal aid is granted anytime before or during the trial</p> <p>The individual who is requesting legal aid can be exempt of paying expert, translator, interpreter, bailiff, lawyer fees and the state fees</p>	<p><b>EXCLUSION OR REVOCATION:</b></p> <p>If evidence shows a higher standard of living or not compatible with declared income</p> <p>If the cost of the trial is disproportionate towards the requested claims</p> <p>If the claims are contrary to public order</p> <p>Exceeding the income limits during the proceedings</p> <p>In the absence of mediation or other alternative solutions when they are mandatory</p> <p>When the applicant demands compensation for harms to the image, honor and reputation, in absence of material damage and when the demand results from</p>	<p>The abusive claims and the careless behavior towards the trial which ends up by losing the case will determine a total refund of the legal aid provided</p>

<p><b>Emergency Ordinance 21/04/2008 n. 51 and Law 07/06/1995 n. 51</b></p>	<p><b>RULE</b></p>	<p><b>SPECIFICATIONS</b></p>	<p><b>EXCLUSIONS</b></p>	<p><b>PROBLEMS</b></p>
<p><b>EFFECTS</b></p>	<p><b>COVERING:</b></p> <ul style="list-style-type: none"> <li>- Lawyer fees</li> <li>- expert, translator, interpret fees</li> <li>- Bailiff fees</li> <li>- Exemptions, discounts, reschedules, delays in paying state fees</li> </ul> <p><b>Extra coverage for EU citizens/ EU inhabitants</b></p> <ul style="list-style-type: none"> <li>- Documents translations fees</li> <li>- interpret assistance during court hearing</li> <li>-traveling fees</li> </ul>	<p><b>UNFREE CHOICE OF THE LAWYER</b></p> <p>The lawyer can be chosen by the applicant in exceptional cases, with the approval of the dean.</p> <p>The legal aid cannot be granted by the lawyers with disciplinary sanctions, sentenced for common offenses, that broke the law of lawyers repeatedly or who gave a inferior legal assistance.</p> <p><b>FREE CHOICE OF THE BAILIFF</b></p> <p><b>UNFREE CHOICE OF THE EXPERT, TRANSLATOR AND INTERPRET</b></p> <p>The legal aid will be supported from the state funds.</p> <p>The legal aid is granted during the whole procedure requested through the initial claim.</p>	<p>Earnings after paying taxes per family member during 2 months before requesting legal aid &lt; 133, (3) € (600 RON) 50%  <b>REDUCED PAYMENT OF FEES</b></p>	<p><b>INCOMPATIBILITY OF THE LAWYER</b></p> <p>The lawyer who provided extrajudicial assistance cannot provide judicial assistance to the same applicant in the same case.</p> <p>In case of losing the trial, the applicant must to pay the judicial expenses of the opposing party.</p> <p>If the application for legal aid from Romania is rejected by the competent authority of the requested State (EU member), the Romanian Central Authority will require to the applicant the reimbursement of the costs of translation.</p>

## **Costs of proceedings**

Information explaining the various cost sources is not easily available as it is not published on public institutions' websites, nor mentioned in leaflets.

Legal representatives do not have a direct obligation to provide parties with prior information on their rights and obligations, their prospects of success and the costs involved in the proceedings.

However, under the Statute of the legal profession the lawyer has the duty to advise his or her client in a prompt, conscientious, correct and diligent manner.

Information can be obtained directly from people working in the field or from some laws relating to judicial costs.

VAT is added to these amounts where legally required.

There are no fixed costs for litigants pertaining to criminal or constitutional proceedings.

## **Lawyer's Fees**

Lawyers' fees are regulated by Act No 188/2000 on judicial executors and Order No 2550/C of 14 November 2006 approving minimum and maximum fees for services provided by judicial executors.

Lawyers' fees are variable and determined according to the case's level of difficulty, size and duration.

The level of fees may be agreed upon freely between the lawyer and his / her client, yet within the limits of the law and the Statute of the profession.

The level of fees payable can be based on: an hourly rate charged in relation to hours worked; a fixed sum; an amount dependent on a successful outcome.

In addition to a fixed sum, the lawyer may request an additional, fixed or variable sum paid upon success but it is strictly forbidden however to base the lawyer's fee exclusively on the judicial outcome.

It is almost impossible to provide an estimate of the fees because this information can only be obtained after presenting the case to a lawyer, who will then assess the fees to be paid taking into account all the case necessary related aspects, and mainly the workload, the value of the litigation and also the nature of the litigant.

### **Bailiff and experts' costs**

Judicial executor (Bailiff) fees are fixed by Law n.188/2000 on judicial executors/bailiffs as well as by Order n.2550/C of 14 November 2006 on the approval of minimum and maximum fees for judicial executors' services.

Experts' fees are regulated by the Civil Procedure Code and by Government Ordinance n.2/2000 on the organisation of the activity of judicial or extra - judicial technical expertise.

The execution - related expenses must be paid in advance by the party that has requested it although the advance payment of the judicial executors' fees cannot be a condition for the execution of Court decisions.

The judicial executor is paid by the party which has requested the execution of a certain procedure and for each individual enforcement act.

Fees charged by judicial technical experts are variable and established by the body which has ordered the assessment, taking into account the complexity of the assessment, the volume of work involved and the professional or scientific grade of the judicial technical expert.

## **Court costs**

In case of civil action to the Courts, claims are subject to Court fees and must receive the judicial stamp.

Court fees and stamp duty are regulated by Law n.146/1997 on Court fees and Government Ordinance n.32/1995 on stamp duty.

Judicial decisions, subpoenas, and notifications are communicated to parties, witnesses, experts or any other persons or institutions involved in the litigation for free.

The applicant pays the Court fee he or she estimates to be correct upon submission of the claim and, at the first hearing, the Court determines the legal Court fees to be paid and duly requests the party to pay any shortfall.

The consultation or copying of documents from the Court file and of certificates from the Court clerk's office are subject to payment.

### **Translators' fees**

**Translators or interpreters' fees** are determined by the Court in the ruling which appoints the interpreter or translator.

Translation and interpretation fees are regulated by the Civil Procedure Code, by Law n. 178/1997 and by Order n.772 of 5 March 2009 on the establishment of fees for authorised interpreters and translators.

With reference to translation fee, the party which has requested interpretation services must pay the Court - fixed fee, the official travel expenses or the interpreter's fee within 5 days of the fixing of the fee.

As regards experts' fees, the amount established as provisional fee and the advance payment for travelling costs, where applicable, are to be paid within five days after the appointment of the judicial technical expert, by the party that has requested the assessment, in the special account opened specifically for this purpose by the local office for judicial and accounting technical assessments.

The Court may also decide that those expenses be borne by both parties.

## **Experts' fees**

Article 274 of the Code of Civil Procedure provides that the losing party shall be obliged, upon request, to pay the legal expenses, including the fees of the judicial technical experts paid for by the winning party.

## **Mediation**

Mediation is regulated by Law n.192/2006 on mediation and the organisation of the profession of mediator.

The Mediation Council, established by Law n.192/2006 on mediation, is responsible for supervising mediation in Romania; it is an autonomous legal entity which acts in the public interest and has its headquarters in Bucharest.

The members of the Mediation Council are elected by the mediators and approved by the Ministry of Justice of Romania.

The main responsibilities of the Mediation Council are to adopt decisions in order to set the training standards in the field of mediation (on the basis of best international practice and to supervise their adherence by the professionals), authorise mediators,

maintain and update the List of Mediators, approve the training curricula for mediators, adopt the Ethical and Deontological Code for authorised mediators, adopt regulation on the organisation and functioning of the Mediation Council, initiate proposals to amend or to correlate legislation on mediation.

In accordance with Article 12 of Law n.192/2006, authorised mediators are registered in the "Panel of Mediators" managed by the Mediation Council and published in the Romanian Official Journal.

The list of authorised mediators contains information on: their membership to professional associations, the institution from which they graduated, the mediation training programme they followed, foreign languages in which they are able to conduct mediation services, their contact details.

Article 2 of Law n.192/2006 allows parties to seek mediation in disputes relating to civil or penal matters, family matters and other fields of law subject to the legal provisions.

Consumer disputes, and other disputes subject to renounceable rights, can also be resolved using mediation but matters relating to personal rights and to non-renounceable rights cannot be the subject of mediation.

Recourses to mediation is voluntary as there is no obligation for parties to look for mediation services, and they may opt out of mediation at any stage.

Interested parties may contact a mediator before coming to Court, and also during Court proceedings.



However, various national legal provisions in the field of mediation oblige Judges, in certain cases, to inform parties of the possibility of opting for mediation and the advantages of doing so.

In other cases, a number of financial incentives are offered to parties who choose mediation or other alternative dispute resolution proceedings.

On 17 February 2007 has been approved the Ethical and Deontological Code for mediators.

Training courses are run on a regular basis with initial training course of 80 hours concerning objectives, skills to have developed by the end of the programme and the evaluation methods.

Mediation is not free of charge; the level of payment is subject to agreement between a private mediator and the parties.

Directive 2008/52/EC creates the possibility to request that the content of a written agreement resulting from mediation be made enforceable.

Member States shall inform the Commission of the Courts or other authorities competent to receive requests.

Law n.192/2006 provides that the mediator is entitled to payment of a fee agreed with the parties, as well as to the reimbursement of expenses incurred in connection with the mediation.

No VAT is applicable to Court fees, nor to the stamp duty and neither to the lawyers' fees included in the legal assistance contract.

### Summary Table

ROMANIA	CIVIL	CRIMINAL	ADMINISTRATIVE
<b>acces before a court</b>	paying a state fee	free	paying a state fee
<b>costs (negative aspects)</b>	The state fees are big in comparison with the minimum income of a Romanian citizen. Usually the state fees are bigger than the attorneys fees. The state fees are regulated by the Government Ordinance no. 80/2013.	The state fees supported by the delinquent are acceptable.	The state fees are acceptable.
<b>costs (positive aspects)</b>	In some situations the applicant can obtain refunds, reductions, rescheduling or deferral for the payment of state fees		In some situations the applicant can obtain refunds, reductions, rescheduling or deferral for the payment of state fees
<b>acces to law</b>	Basic and free acces to law by internet at <a href="http://legislatie.just.ro">http://legislatie.just.ro</a>		
<b>acces to jurisprudence</b>	Free acces to jurisprudence of all courts by internet at <a href="http://portal.just.ro/SitePages/jurisprudenta.aspx">http://portal.just.ro/SitePages/jurisprudenta.aspx</a> <a href="http://www.scj.ro/736/Cautare-jurisprudenta">http://www.scj.ro/736/Cautare-jurisprudenta</a> <a href="http://www.rolii.ro">http://www.rolii.ro</a>		

ROMANIA	CIVIL	CRIMINAL	ADMINISTRATIVE
<b>access before a bailiff</b>	The bailiff fees are big in comparison with the minimum income of a Romanian citizen and must be paid an advance.		
<b>legal aid</b>	The legal aid is regulated by the Government Emergency Ordinance no. 51/2008. The legal aid is granted in civil, commercial, administrative, labor and social security, as well as other causes, except criminal. The legal aid is granted rarely because of very restrictive conditions provided by law. The judges don't grant easily the legal aid. The legal aid can be granted as assistance by a lawyer, as the payment of the expert, translator or interpreter fee, as the payment of the executor fee or facilities to pay the court fees. The ordinance provides special rules for granting legal aid citizens of European Union Member States other than Romania.		

# SPAIN

## Legal Aid

Pursuant to Article 119 of the Spanish Constitution, legal aid is a procedure whereby those who can demonstrate a lack of sufficient financial means are granted a series of benefits mainly consisting of exemption from payment of lawyers' and legal representatives' fees and costs arising from expert testimonies, guarantees, etc.

Broadly speaking, the right to legal aid includes the following benefits:

- free advice and guidance prior to the start of proceedings;
- access to a lawyer by the person under arrest or the prisoner;
- free defence and representation by a lawyer and legal representative during the legal proceedings;
- free publication in the course of the proceedings of announcements and edicts that must be published in official gazettes;
- exemption from the payment of deposits for the lodging of appeals;
- free assistance from experts during proceedings;
- free procurement of copies, testimonies, instruments and notarial certificates;
- 80% reduction in fees for certain notarial actions;
- 80% reduction in fees for certain actions carried out in relation to the Land and Commercial Registers.

For cross-border disputes only (after reform of the Legal Aid Law by Law 16/2005 of 18 July 2005, which brought it into line with Directive 2002/8/EC), the following items have been included in the above rights:

- Interpretation services;
- Translation of documents;
- Travel costs where an appearance in person is required.

In general, it can be requested by citizens who are involved in or about to initiate any kind of legal proceedings and who lack sufficient financial means to carry out the litigation.

Natural persons are deemed to have insufficient resources when they can provide evidence that all the components of their annual resources and revenue, calculated by family unit, do not exceed twice the Public Index of Income (IPREM) applicable at the time of application.

The Legal Aid Commission may exceptionally decide to grant the right to legal aid where the resources exceed double the IPREM but do not exceed four times the IPREM.

For legal persons to qualify for legal aid, their taxable base for corporate tax must be lower than the amount which is equivalent to three times the annual calculation for the IPREM.

The legal person must be a non-profit organisation or foundation registered in the corresponding administrative register.

In any case, other external signs that demonstrate the real financial capacity of the applicant will be taken into account.

There are exceptions for natural persons based on disabilities and/or other family circumstances that allow the above income limits to be exceeded.

Specifically, are entitled to legal aid Spanish citizens, nationals of other Member States of the European Union and any foreigners resident in Spain, where they can demonstrate insufficient means for litigation.

In employment proceedings: all employees and beneficiaries of the social security system.

In criminal proceedings: all citizens, including foreigners, who can demonstrate insufficient means for litigation, even where they do not legally reside in Spain.

In administrative Court proceedings: all foreign citizens who can demonstrate insufficient means for litigation, even where they do not reside legally in Spain.

With the entry into force of Organic Law 1/2004 of 28 December 2004 on Comprehensive Protective Measures against GenderBased Violence (Ley Orgánica 1/2004 de Medidas de Protección Integral contra la Violencia de Género), women who are victims of gender-based violence are granted full legal aid immediately.



LAW 1996, JANUARY 10 <sup>TH</sup> , n. 10	RULE	SPECIFICATIONS	EXCLUSIONS	PROBLEMS
WHO	<p>spanish citizens, eu citizens and foreigners in spain; management institutions and common social security services, always;</p> <p>public utility associations and foundations registered in the public registry;</p> <p>spanish red cross;</p> <p>association of consumers and users. (art 2.2 of the law for the defense of consumers and users).</p>	<p>individuals: when they demonstrate having insufficient resources according to the requirements of article 3 of this law;</p> <p>public utility associations and foundations registered in the public registry when they demonstrate having insufficient resources to litigate, regardless of their resources to litigate for associations which purpose is the promotion and defense of victims of terrorism;</p> <p>victims of violence against women, terrorism and human trafficking, children, and people with mental disabilities (in proceedings that are related to, arise from or are consequences of their victim status), without the need to demonstrate having insufficient resources as long as they maintain their victim status;</p> <p>workers and beneficiaries of social security before labour courts, without the need to demonstrate having insufficient financial resources;</p> <p>accident victims with permanent damages without the need to demonstrate having insufficient resources.</p>	<p>when having financial means exceeding the limitset by the law;</p> <p>legal persons other than those mentioned in the previous table;</p> <p>it will not be granted after lodging a claim, or after lodging the statement of defense, except if it is desmonstrated that the requirements to be entitled to legal aid have originated subsequently.</p>	<p>the recognition of the right to legal aid is not retroactive</p>

<p><b>CONDITIONS</b></p>	<p>maximum values to access:</p> <p>twice the multiplier for the public income index (iprem)* for persons who do not belong to a family unit;</p> <p>twice the iprem for persons who belong to a family unit of less than 4 members;</p> <p>3 times the iprem for family units of 4 or more members, or who have had their "large-family" status legally recognized.</p> <p>*public income index (iprem) year: 2017 daily: 17.75€ /day monthly: 532.51€/month annual (12 fee): 6390.13€/year annual (14 fee): 7455.14€/year</p>	<p>14,910.28 € for persons who do not belong to a family unit;</p> <p>18,637.85 € for persons who belong to a family unit of less than 4 members;</p> <p>22,365.42€ for families of 4 or more members;</p> <p>37,275.70€ when the exceptional circumstances referred to in article 5 of law 1/96 are demonstrated.</p>		<p>when the applicant belongs to a family unit, all the incomes received by its members will be taken into account.</p> <p>may be excluded, regardless that the thresholds requirements to apply for a legal aid lawyer are met, the cases established in article 4 of this law.</p>
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<p><b>WHAT</b></p>	<p>Pre-trial legal advice and guidance;</p> <p>Lawyer's legal assistance to detainee or prisoner;</p> <p>free defense and legal representation by alawyer in judicial proceedings;</p> <p>free placement of communications and notices;</p> <p>exemption from payment of court fees andof deposits for the appeal;</p> <p>free expert assistance;</p> <p>obtaining copies, testimonies, instruments and notarial acts without costs;</p> <p>reduction of 80% of the fees of notary actions;</p> <p>reduction of 80% of the commercial properties registers fees;</p> <p>exemption from payment of the costs of the proceedings if ordered to bear them by the court.</p>			<p>The right to legal aid must be recognized in each judicial proceedings. when the proceedings ends, the benefit is exhausted.</p>
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<p><b>HOW PROCEDURE</b></p>	<p>Attend to the legal orientation service of the corresponding bar association.</p> <p>Fill out the application form, attaching the information required. the legal orientation services of the bar associations will study the submitted documentation.</p> <p>The application may also be submitted to the judicial body corresponding to the applicants domicile, which will forward it to the competent bar association</p>			<p>if it is considered that the application is insufficient or that there are deficiencies, a period of 10 business days is granted to the applicant to rectify defects</p>
<p><b>EFFECTS</b></p>	<p>The legal aid beneficiary only have to bear 20% of the amount of fees corresponding to the issue of public deeds, and to obtain copies and notarial testimonies.</p>		<p>shall not be paid by the applicant when it is demonstrated that the income is below the iprem</p>	<p>if the rightholder wins the case, obtaining financial benefits, and the judgment does not include an express ruling on the costs, he shall bear the costs incurred for his defense, without exceeding the third part of the benefit obtained</p>

COURT ORDER TO BEAR THE COSTS OF THE PROCEEDINGS: Art. 36 of the Law on LEGAL AID(LAJG) states that: "When the Court decision that ends the proceedings orders the person who had obtained the recognition of the right to legal aid, or who had this right legally recognized, to bear the costs, this person will be bound to pay the costs incurred for their defense and those of the opposing party, if, within three years of the end of the proceedings, that person's financial situation improves.

**WHEN THE LEGAL AID BENEFICIARY IS ORDERED BY THE COURT TO BEAR THE COSTS OF THE PROCEEDINGS, THEY WILL HAVE THE OBLIGATION TO PAY THEM IF WITHIN THE FOLLOWING THREE YEARS THEIR FINANCIAL SITUATION IMPROVES.**

## Lawyer's Fees

In Spain there is only one category of lawyer (abogado) who, after becoming a member of the professional association of the place, can appear in any type of proceedings and before any type of Court.

Lawyers set their fees according to guidelines published by their professional association and based on general criteria such as complexity of the case and proportionality.

In civil proceedings article 241 of the Code of Civil Procedure (Ley de Enjuiciamiento Civil) specifically covers lawyers' fees for cases where the assistance of a lawyer is mandatory as these fees are included as an item in calculating costs.

The client has a rough idea of the sum involved from the outset but the exact amount of the lawyer's bill has to be established once litigation has ended.

The lawyer can claim payment from the client, including through special procedures such as an advance on fees (provisión de fondos, while the proceedings last) or a final statement of accounts (jura de cuentas, once concluded).

In practice, what usually happens is that the client initially pays an amount in advance and then awaits a decision on costs.

In cases where the other party has to pay the fees, the lawyer and legal representative present their fees to the Court, and once the fees are approved they are paid by the opposing party.

In criminal proceedings the client is required to pay the bills that are issued once the proceedings have ended but there is no advance payment of money when Court - appointed lawyers are used because legal aid is normally processed at the same time.

So, if the client is entitled to legal aid, he or she does not have to pay the lawyer's fees and the State will pay the bill unless the client's financial situation improves within a period of three years (usually they do not pay anything).

Both the lawyer and the legal representative have a duty to inform the client as often as the the client so requests.

## Court costs

It is a national tax that must be paid in certain cases by users, whether natural or legal persons, for going to Court and making use of the public service of the administration of justice.

The requirement to pay this fee was introduced on 1 April 2003 and it is currently governed by Law n. 10/2012 of 20 November 2012, as amended by Royal Decree n. 3/2013 of 22 February 2013.

In some cases payment of this fee is mandatory.

The fee for the exercise of judicial power in civil, administrative (contencioso-administrativo) and employment cases is uniformly chargeable throughout Spain.

That payment is due when the exercise of judicial power has been generated by the following procedural steps:

- bringing of an action in any type of proceedings for a full judgment and proceedings for the enforcement of out of Court enforceable instruments in civil cases, the filing of a counterclaim and the initial application for the order for payment procedure and the European order for payment procedure,
- filing for compulsory insolvency and ancillary claims in bankruptcy proceedings,
- lodging of proceedings in administrative Court cases,
- lodging of an extraordinary appeal for breach of procedure in civil proceedings,
- lodging of appeals (apelación or casación) in civil and administrative Court cases,
- lodging of appeals (suplicación or casación) in employment cases,
- objection to the enforcement of judicial instruments.

Anyone who instigates the exercise of judicial power that produces the chargeable event is liable for payment of the fee.

The fee can be paid by the legal representative (procurador) or lawyer (abogado) in the name and on behalf of the taxable person, in particular if the latter is not resident in Spain.

There are exemptions for categories of action (for instance cases of capacity, filiation, matrimony and minors, fundamental rights, public freedoms, and also appeals against the conduct of the election administration, voluntary insolvency, statutory rights etc) and

for categories of people (persons who are entitled to legal aid, Public Prosecutor's Office etc).