



## LEGAL AID AND ADVICE

Replies made by governments  
to the questionnaire on legal aid and advice

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STRASBOURG  
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NCJRS

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ACQUISITIONS

LEGAL AID AND ADVICE

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REPLIES MADE BY GOVERNMENTS  
TO THE QUESTIONNAIRE ON  
LEGAL AID AND ADVICE

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Strasbourg 1978

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## Introduction

1. In 1974 the Committee of Ministers of the Council of Europe, acting on the proposal of the European Committee on Legal Co-operation, set up the Committee of Experts on economic and other obstacles to civil proceedings inter alia abroad. The Committee of Experts was instructed to begin its work by studying various matters relating to legal aid and advice. In the course of this work the Committee adopted, in October 1975, a questionnaire on legal aid and advice to which member States were invited to reply. In December 1977 the name of the Committee was changed to the Committee of Experts on access to justice.
2. This document contains the replies given by the governments of the following member States: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey and the United Kingdom. In addition Canada and Finland, which are represented by observers at the meetings of the Committee of Experts, also sent their replies. Although the replies to the questionnaire were originally submitted in the course of 1976, governments were subsequently invited to bring the information up-to-date before 1 July 1977.
3. The publication of the governments' replies meets several needs. First of all, it constitutes a source of information for those who require it on the legislation in force in member States. Moreover, it gives a survey of the reforms undertaken in a certain number of member States in recent years both in the field of legal aid and that of legal advice and it offers to other States the possibility of using these as examples. It is perhaps in the field of legal advice, which attracts more and more attention among those concerned, that States could profit most from the systems which have been created elsewhere in order to facilitate access to justice by such means. It is not thus unreasonable to hope that the publication could contribute to the implementation of the Resolution (78) 8 on legal aid and advice which was adopted by the Committee of Ministers on 2 March 1978.
4. The European Committee on Legal Co-operation was of the opinion that these replies would be of considerable interest to those concerned with legal aid and advice as well as to the general public and as a result recommended the publication of the government's replies.



Text of the  
questionnaire on legal aid and advice  
drawn up by the Committee of Experts

Introductory note

This questionnaire concerns legal aid and advice in civil, commercial and administrative matters. It does not cover criminal matters.

In your replies to the questions set out in Sections A to D below, please indicate the existing rules. Would you also please append a list of references in so far as you think it useful to do so.

A. Legal aid in court proceedings

Q.1. Which physical persons are eligible for legal aid in your country:

- a. nationals;
- b. aliens domiciled or resident in your country;
- c. other aliens;

In the case of (b) and (c) is it subject to conventions or reciprocity?

Q.2. Is legal aid available for legal persons (domestic and foreign)?

- Q.3. a. Are there any jurisdictions for which legal aid is not available (eg administrative courts or tribunals)?
- b. For which proceedings can legal aid be granted?
- c. Are there any exceptions and, if so, which (contentious and ex parte proceedings)?

Q.4. Who grants legal aid?

Q.5. What are the financial conditions for eligibility? In particular:

- a. What are the methods of assessing the applicant's financial position? eg:
- What, if any, are the financial limits below which a person is eligible for legal aid (eg income, capital, property disregarded, maintenance obligations etc)?
  - If so, how are changes in the cost of living taken into account?
  - Is account taken of the financial position of the applicant in relation to the expected cost of the proceedings?
- b. Are there any circumstances in which legal aid may be granted without the applicant necessarily having to fulfil the financial requirements (eg children born out of wedlock)?

- Q.6. a. Must it be established that a person applying for legal aid in your country has any prospect of success in the matter for which he seeks legal aid?
- b. How thoroughly is this question examined?
- c. Can you give any indication as to the proportion of applications refused on this ground?
- Q.7. Are there any other special circumstances in which legal aid would be granted or refused (eg when the application is made by an agent or by someone holding a power of attorney or if it concerns an important case)?
- Q.8. Are the criteria mentioned under Questions 5 and 6 applied differently to aliens?
- Q.9. What costs relating to the proceedings are covered by legal aid:
- a. court costs (court fees and taxes, bailiff's costs, costs relating to witnesses and experts);
- b. the personal costs of the legally aided person (including travel and subsistence expenses when the court requires him to appear in person);
- c. costs of the lawyer (1) (fee and expenses);
- d. payment of security (cautio judicatum solvi);
- e. other costs?
- Q.10. May the granting of legal aid be subject to payment of a contribution by the legally aided person? In what circumstances?
- Q.11. Is there any other provision in your country for granting of partial legal aid (eg for only part of the costs of the proceedings)? If so, give details.
- Q.12. Is the other party or any public authority heard before a decision granting legal aid is taken?
- Q.13. Must legal aid be granted separately for each stage of the proceedings?
- Q.14. a. By whom is the lawyer assisting the legally aided person chosen?
- b. Is it the same authority or body which grants legal aid?
- Q.15. Is legal aid provided:
- a. by lawyers (or trainee lawyers) in private practice?
- b. by full-time (or part-time) salaried lawyers at public or private legal aid offices?
- c. by other persons? or
- d. a combination of these possibilities?
- ./.

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(1) In Question 9 and following the term "lawyer" should be taken to include any other person who may be designated to assist the legally aided person within the framework of the legal aid scheme.

- Q.16. a. Are all lawyers obliged to participate in the legal aid scheme or do individual lawyers participate on a voluntary basis?
- b. If on a voluntary basis (ie on a panel), what proportion of the lawyers participate?
- Q.17. a. Does the legally aided person have the right to choose his own lawyer?
- b. Where lawyers participate on a voluntary basis, may the legally aided person choose a lawyer who is not on the panel?
- c. Is the lawyer who is chosen by the legally aided person or nominated free to refuse his services and, if so, on what grounds?
- Q.18 a. If the legally aided person has the right to choose his own lawyer, does this tend to concentrate legal aid work in a small number of lawyers?
- b. If so, what are the main factors involved?
- Q.19 Does the competent authority or body take account of all the circumstances of the case when appointing a lawyer (the applicant's wishes, language, nature of the case etc)?
- Q.20 a. Is the lawyer who represents the legally aided person paid any remuneration?
- b. If so, is the remuneration determined according to a fixed scale of fees or on any other basis?
- c. Are the fees comparable with those which would otherwise apply (ie if the same work was carried out for a private fee-paying client)?
- d. Who determines the fees?
- Q.21 When is the lawyer free to request a supplementary fee from the legally aided person?
- Q.22 a. Can the decision to grant legal aid be terminated or withdrawn or can the legally aided person be requested to refund in part (or in full) sums paid under the legal aid scheme, if:
- i. he recovers money or property as a result of the proceedings?
- ii. his financial circumstances otherwise improve during or after the proceedings concerned?
- iii. in other circumstances,
- b. What are the time-limits for such action?
- c. Can a decision to terminate or withdraw legal aid in such circumstances be given retrospective effect?
- Q.23 a. Must a decision granting legal aid be taken before the proceedings have started and, if not, can the decision be given retrospective effect?
- b. Can legal aid be granted provisionally in an urgent matter?

- Q.24 Are the following decisions subject to appeal (and, if so, to which authority or body and by whom):
- a. the refusal to grant legal aid;
  - b. the granting of legal aid;
  - c. the conditions subject to which legal aid is granted;
  - d. the appointment of a particular lawyer;
  - e. a termination or withdrawal of the decision to grant legal aid;
  - f. the assessment of the fee?
- Q.25 Does the granting of legal aid to one party result in the other party being exempted from advancing certain costs during the proceedings?
- Q.26 Where the legally aided person loses the case, may the winning party be entitled to:
- a. recover his costs from the legally aided person;
  - b. be reimbursed by the state or any other authority?
- Q.27 Where the legally aided person wins the case what costs are recoverable from the losing party?
- Q.28 a. If a person has been granted legal aid in proceedings which have been instituted in another state, is he entitled (automatically or under what conditions) to legal aid in your state for subsequent stages in the procedure (eg taking of evidence, recognition or enforcement of the foreign decision)?
- b. What is the effect of the legally assisted person only having been granted partial legal aid in the state where the proceedings were taken?
- Q.29 a. Is there at present any procedure for submitting a request for legal aid in another state through an authority in your country?
- b. If so, what is the procedure?
- Q.30 Are there any provisions for the granting of legal aid or any other legal assistance to a person in your country for the purpose of legal proceedings in another state?
- a. By a lawyer in your own state?
  - b. By a lawyer in the other state?

B. Legal aid for administrative matters

- Q.31 Can legal aid be granted in your country for administrative matters other than those dealt with under Section A?. In what circumstances?

C. Legal advice outside court proceedings

(Legal advice may include oral advice or practical assistance in drawing up wills, contracts, writing letters or applications to public authorities etc.)

- Q.32 What possibilities exist in your country for a person of modest means to obtain legal advice outside court proceedings?
- Q.33 If possibilities exist for such legal advice by whom are the services rendered:
- a. state or local government legal aid offices or other authorities as part of their normal duties?
  - b. lawyers in private practice?
  - c. professional organisations of lawyers?
  - d. other organisations?
- Q.34 Does the rendering of legal advice form part of a general legal aid scheme or is it provided in any other way?
- Q.35 In case of legal advice being given by public authorities or by private lawyers remunerated out of public funds, in what way does the legal advice scheme differ from the legal aid system dealt with under sections A and B above?

D. The administration of legal aid and legal advice schemes

- Q.36 How are the various systems of a. legal aid, and b. legal advice financed in your country?
- Q.37 Approximately what proportion of the population in your country is eligible:
- a. for legal aid:
    - i. free of charge;
    - ii. partially granted (eg subject to contribution);
  - b. for legal advice:
    - i. free of charge;
    - ii. subject to contribution?
- Q.38 For what types of cases is a. legal aid, and b. legal advice most commonly given?
- Q.39 If public legal aid offices are set up in your country, please describe if possible:
- a. how they are organised;
  - b. what are qualifications and experience of the staff;
  - c. how the salaries of their lawyers compare with the income of lawyers in private practice;
  - d. Are there any difficulties in recruiting and retaining lawyers?

Q.40 What action is taken and by whom:

- a. to publicise the availability of legal aid and advice;
- b. to encourage the public to avail themselves thereof?

Q.41 a. Is a lawyer who acts for a person under the legal aid scheme liable for damages?

- b. If not, is the legal aid authority liable for the acts of the lawyer?

Q.42 Please furnish any available statistics relating to your legal aid and advice schemes (eg the number of cases, total costs etc).

E. Trends

Q.43 a. Are there any projects for improving the existing legal aid and advice systems in your country?

- b. If so, please give brief details mentioning any matters in the order of this questionnaire and point to any trends.

## GENERAL OBSERVATIONS BY GOVERNMENTS

Some replies begin with general observations either as regards the questionnaire as a whole or as regards sections A-D thereof. These observations together with the entire reply in respect of Ireland owing to its particular character, are set out below.

### AUSTRIA

The legal basis is the Federal Act amending, for the purpose of regulating the legal aid system, the Act to introduce the Code of Civil Procedure, the Code of Civil Procedure, the Code of Criminal Procedure, the Juvenile Courts Act, the Administrative Court Act and the General Administrative Procedure Act (Legal Aid Act)/Bundesgesetz, mit dem das Einführungsgesetz zur Zivilprozessordnung, die Zivilprozessordnung, die Strafprozessordnung, das Jugendgerichtsgesetz, das Verwaltungsgerichtshofgesetz und das Allgemeine Verwaltungsverfahrensgesetz zur Regelung der Verfahrenshilfe geändert werden (Verfahrenshilfegesetz). That Act of 8 November 1973, Fed. Law Gaz. No. 569, entered into force on 1 December 1973.

### BELGIUM

The legal provisions applicable in respect of legal aid are to be found in the law of 10 October 1967 containing the Judicial Code (Articles 455 and 664 to 699).

### IRELAND

There is as yet no statutory scheme of legal aid and advice in civil matters in this country. However, the Minister for Justice has set up a committee to advise him on the introduction, at an early date, of such a scheme.

There is an arrangement whereby legal aid may, in certain circumstances, be granted on an ex-gratia basis in the case of applications for state-side orders (e.g. habeas corpus, mandamus, certiorari). The Department of Finance defray the cost of solicitor and counsel in such proceedings where the applicants themselves are unable to meet the costs and the High Court or Supreme Court consider it proper that solicitor and counsel should be employed.

Legal advice (and, to a very limited extent, legal aid) is provided by the free legal advice centres (FLAC) which are organisations of law students. FLAC have a number of part-time centres in the larger cities and one full-time centre in Dublin. The law students who provide advice at the part-time centres have available to them the assistance of qualified solicitors who attend the centres on a voluntary basis to provide a professional backup service. The full-time centre employs a solicitor on a full-time basis. None of the FLAC centres operate a means test but when it is obvious to them that the person seeking advice is in a position to pay, it is the practice to refer the person to a solicitor in private practice. The centres do not ask for any contributions from clients for their services, nor do they confine themselves to any particular types of legal problems. The organisations are provided with financial assistance by the Department of Justice.

Legal advice and (where necessary) legal aid is provided by a number of trade unions for their members, but usually it is available in respect of matters relating to members' employment (such as injuries at work or wrongful dismissal). Legal aid and advice is also provided by certain charitable organisations.

#### NETHERLANDS

List of references in the Netherlands reply to the questionnaire:

1. Act of 4 July 1957 on legal aid to poor persons and persons of limited means ("rechtsbijstand aan on- en minvermogenden"), published in Staatblad 1957, No. 233.
2. Sections 855 - 871 of the Code of Civil Procedure.
3. Section 40 of the Aliens Act.

#### NORWAY

Unless otherwise annotated in the replies to the various questions, the provisions mentioned below are prescribed in:

- Legal aid in court proceedings: the Ministry of Justice's circular relating to legal aid of 15 October 1969 and § 423 of Act No. 6 of 13 August 1915.
- Legal advice: the Ministry of Justice's circular of 1 November 1962 relating to legal advice as amended by circulars of 2 February 1970 and 9 June 1975.

#### SWITZERLAND

The organisation of the courts and civil procedure are governed by the legislative authority of the cantons. However, the right to legal aid exists by virtue of federal law and derives from Article 4 of the Constitution.

Its legal basis is to be found in:

- a. The provisions of cantonal and federal law.
- b. The decisions of the Federal Court on Article 4 of the Constitution; the cantonal authorities must observe the minimum requirements thus prescribed.

#### UNITED KINGDOM

The legislation relating to legal aid, advice and assistance in England and Wales is contained in:



1. Part I of the Legal Aid Act 1974 (referred to hereafter as "the Act"), which consolidated all previous legislation and lays down the general principles on which legal aid, advice and assistance may be granted and specifies the courts, tribunals and matters for which it is to be available;
2. A number of sets of regulations, made by the Lord Chancellor, which contain detailed provisions for the working of the legal aid schemes, and lay down the financial provisions and the rules for assessing the resources of applicants;
3. A scheme made by the Law Society, which provides detailed instructions for the administration of the legal aid scheme by the Law Society, including the system of local and area committees and the machinery for dealing with complaints; and
4. Rules made under the Law Society's scheme, which contains detailed provisions as to the conduct of hearings before the tribunal which deals with complaints about barristers or solicitors in legally aided cases.

In Scotland, which has a separate legal system, the legislation relating to legal aid, advice and assistance is contained in the Legal Aid (Scotland) Act 1967 and the Legal Advice and Assistance Act 1972. The broad pattern of this legislation, and the subordinate legislation made under it by the Secretary of State for Scotland, the Court of Session and the Law Society of Scotland, is very similar to the pattern in England and Wales although the detailed application is often different. In Northern Ireland, the legislation is contained in the Legal Aid and Advice Act (Northern Ireland) 1965 and regulations made thereunder. Again the broad pattern of the legal aid system in Northern Ireland is similar to that in England and Wales, and steps are currently being taken to bring the legislation in Northern Ireland into line with that in England and Wales. Where substantial differences exist, between the three legal aid systems, an indication of these is given in the answers which follow. In general, references to the Area Committee (of the Law Society) can be taken as references to the Legal Aid Central Committee in Scotland and to the Legal Aid Committee in Northern Ireland.

It is not thought necessary to give specific references to the particular legislative provisions in the answers to each question.

#### CANADA

In order to make the response of the questionnaire readily intelligible some explanation of the Canadian legal and governmental system is necessary.

Canada has a population of 22,500,000, spread over a very wide geographic area. It has a federal form of government based on the parliamentary system. The central, federal government has legislative jurisdiction over matters of national concern. The ten provincial governments have legislative jurisdiction over matters of provincial interest. The division of legislative jurisdiction requires both levels of government to co-operate extensively in attempting to meet the needs of the Canadian people. This division of legislative authority has, to a considerable extent, affected the manner in which systems for the delivery of legal aid services in Canada have developed.

Legal aid services in Canada are delivered at a provincial level through programmes funded and administered by the various provincial governments. Because of this, legal aid priorities are mainly set, particularly in the civil legal aid area, by the provincial governments and substantial differences have arisen in levels of service, areas of emphasis and methods of delivery of legal services. As a result of federal responsibility for the criminal law and criminal procedure, minimum national standards of criminal legal aid have been set through the use of agreements with the individual provinces whereby the provinces agree to provide criminal legal aid services and the federal government to share in the costs of these services.

Despite the differences in approach of the various provincial legal aid plans, at this time a large portion of the Canadian population has access to reasonably comprehensive civil and criminal legal aid services. However, serious problems still exist with regard to the provision of legal aid in rural and remote areas. Two small provinces with a combined population of approximately 850,000 do not provide any civil legal aid services whatsoever.

The answers to the questionnaire therefore reflect the average standard of legal aid services. Because of the considerable differences in size and in approach to the provision of legal aid services in the various provinces, considerable generalisation has been necessary in answering the questionnaire. Where more specific information is required it may be obtained from the directors of the various provincial legal aid plans listed in the booklet, The Delivery of Legal Aid Services in Canada (1). This book is also a valuable general reference.

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(1) This booklet and other documents referred to in the reply are available for consultation at the Council of Europe Secretariat.

A. Legal aid in court proceedings

Question No. 1

Which physical persons are eligible for legal aid in your country:

- a. nationals;
- b. aliens domiciled or resident in our country;
- c. other aliens.

In the case of (b) and (c) is it subject to conventions or reciprocity.

Replies

AUSTRIA

Both nationals and aliens are eligible for legal aid; an alien party may be granted legal aid only on the condition of reciprocity unless otherwise provided by international agreements. If observance of reciprocity is doubtful, the Federal Minister of Justice has to be consulted on the matter. Stateless persons are on an equal footing with nationals (Art. 63, para 3, Code of Civil Procedure). Aliens are not required to be domiciled or resident in Austria in order to be eligible for legal aid.

BELGIUM

Persons of Belgian nationality are eligible for legal aid. Legal aid may also be granted to aliens, as provided under international treaties (Article 668 of the Judicial Code). The instruments concerned are more particularly the following:

- 1. The Hague Conventions of 17 July 1905 and 1 March 1954, relating to Civil Procedure;
- 2. The particular agreements concluded with a view to facilitating the application of these conventions;
  - Federal Republic of Germany: Convention of 25 April 1959;
  - France: Convention of 1 March 1956
  - Roumania: Convention of 3 October 1975;
- 3. The bilateral conventions concluded with the undermentioned States and independent of The Hague Conventions;
  - Brazil: Convention of 10 January 1955;
  - Bulgaria: Convention of 2 July 1930;
  - Great Britain: Convention of 4 November 1932;
- 4. Other international conventions to which Belgium is a party embody provisions concerning legal aid:
  - Article 16 of the Geneva Convention of 28 July 1951 relating to the legal status of refugees;
  - Article 16 of the New York Convention of September 1954 relating to the status of stateless persons;

- Article 8 of the European Convention on Establishment of 13 December 1955;
- Article 9 of the United Nations Convention of 20 June 1956 on the recovery abroad of maintenance;
- Article 9 of The Hague Convention of 15 April 1958 on the recognition and enforcement of decisions relating to maintenance obligations in respect of children;
- Article 44 of the Brussels Convention of 27 September 1968 between member States of the European Economic Community, on jurisdiction and the enforcement of judgments in civil and commercial matters.

#### CYPRUS

After the coming into force of our Constitution in 1960 when Cyprus became an independent and sovereign State, all persons, according to Article 28, are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

The term "person" includes both citizens of the Republic and aliens. So, there is no distinction between citizens of the Republic and aliens as regards access to Cyprus courts.

#### DENMARK

Everybody, irrespective of nationality and domicile, shall be eligible for legal aid provided the standard conditions for receiving legal aid have been fulfilled. There are no requirements as to reciprocity, whether on a de facto basis or on the basis of conventions.

#### FRANCE

- a. Yes.
- b. Yes (even without reciprocity).
- c. Only when there is an international convention. (1)

#### FEDERAL REPUBLIC OF GERMANY

- a. German nationals (Section 114, para 1 of the Code of Civil Procedure, Zivilprozessordnung, hereinafter referred to as ZPO).
- b. The granting of legal aid is in principle independent of the domicile or residence of the alien.
- c. Under Section 114, para 2 of the ZPO aliens are granted legal aid under the same conditions as German nationals provided reciprocity is guaranteed. Reciprocity is to be regarded as guaranteed if in the foreign State Germans are granted judicial legal aid to an extent which in the result corresponds to the German legal aid at least approximately.

Special statutory rules apply to certain classes of aliens (refugees, persons persecuted by national-socialism). In particular, homeless aliens within the meaning of the Act on the Status of Homeless Aliens in the Federal Territory are assimilated to Germans in respect of the granting of legal aid (Sections 5 and 11 of the Act.)

Moreover, aliens are granted legal aid if this has been agreed upon in treaties, such as under Articles 20 to 23 of the Hague Convention on Civil Procedure of 17 July 1905; Article 16 of the Geneva Convention relating to the Status of Refugees of 28 July 1951; Articles 20 to 24 of the Hague Convention relating to Civil Procedure of 1 March 1954; Article 8 of the European Convention on Establishment of 13 December 1955; Article 9 of the UN Convention on the Recovery Abroad of Maintenance of 20 June 1956; Article 9 of the Hague Convention concerning Maintenance Obligations towards Children of 15 April 1958; Article 14 of the German-British Convention regarding Legal Proceedings in Civil and Commercial Matters of 20 March 1928; Article 18 of the German-Greek Agreement on Mutual Assistance in Matters of Civil and Commercial Law of 11 May 1938. (cf also reply to Q. 28 (a).).

GREECE

- a., b. and c: Yes. Cases (b) and (c) are subject to the principle of reciprocity (Article 195, para 1, Code of Civil Procedure).

ICELAND

- a. Yes.
- b. and c. Aliens are only eligible for legal aid subject to reciprocity.

ITALY

- a. Indigent Italian citizens in Italy (Art. 16 R.D., 30 December 1923, No. 3282).
- b. Aliens domiciled or resident in Italy.
- c. Aliens even though it is not envisaged by conditions of reciprocity.

LUXEMBOURG

- a., b., c. All indigent Luxembourg nationals. Aliens whose countries have reciprocity agreements with Luxembourg. (The Hague Convention relating to Civil Procedure of 1 March 1954, Art. 20).

NETHERLANDS

- a. Nationals.
- b. Since 1972 aliens domiciled or resident in the Netherlands; until 1976 there was an exception for cases under the Aliens Act and the Extradition Act. This practice is still awaiting confirmation by law.
- c. Other aliens, subject to conventions (concerning about 30 countries).

NORWAY

- a., b., c. Yes. Eligibility for free legal aid under (b) and (c) above is not subject to any convention or reciprocity in relation to the applicant's native country.

PORTUGAL

- a. Nationals.
- b. and c. Aliens except for those whose national laws in similar circumstances do not recognise the right to aid for Portuguese nationals.
- The Portuguese Legal Aid Act does not allude to conventions. ./. .

SWEDEN

- a. and b. Yes.
- c. Aliens not domiciled or resident in Sweden are eligible only in case of reciprocal agreement.

SWITZERLAND

- a. Yes.
- b. Yes (refusal to grant legal aid to an alien resident in Switzerland might run counter to the judicial precedents of the Federal Court).
- c. Confederation and 11 cantons: Yes.

The other 14 cantons: subject to de facto reciprocity (to insist on a formal assurance of reciprocity might conflict with Article 4 of the Constitution). The question of refusal to grant legal aid will only arise if the absence of reciprocity is established.

TURKEY

Both nationals and aliens are eligible for legal aid in Turkey.

In the case of (b) and (c) it is subject to reciprocity.

UNITED KINGDOM

Legal aid is (subject to a minor exception in Northern Ireland) available to any person for proceedings in British courts, whatever his nationality and wherever he is domiciled or resident, provided his means are within the prescribed financial limits and he meets the normal statutory requirements of eligibility in other respects. The availability of legal aid to aliens is not subject to either conventions or reciprocity.

CANADA

In general, physical persons resident in those provinces of Canada whose plans provide civil legal aid services are eligible for these services. There is no present restriction in respect of nationals of other countries and at present there is no requirement of reciprocity although the question of reciprocity in such cases is now being considered. There is usually some discretion in the body administering the various legal aid plans with respect to the provision of legal aid to non-residents. Agreements exist whereby some Canadian legal aid plans will make services available to residents of other Canadian provinces on a reciprocal basis.

FINLAND

According to the Act on Legal Aid in Court Proceedings, nationals and aliens are treated in the same manner.

Question No. 2

Is legal aid available for legal persons (domestic and foreign)?

Replies

AUSTRIA

Legal aid is also available for legal persons (domestic and foreign) or any other entity capable of being a party to a lawsuit if the funds required for going through proceedings cannot be provided either by such person (entity) or by the party financially interested in going through the proceedings (Article 63, para 2, first part of the sentence, Code of Civil Procedure).

BELGIUM

Legal persons are eligible for legal aid under the same conditions as physical persons.

CYPRUS

As it appears from the wording of Articles 28 and 30 of the Constitution of Cyprus, legal aid, subject to certain conditions referred to hereinbelow, is available for legal persons both domestic and foreign.

DENMARK

Legal persons are eligible for legal aid but frequently do not fulfil the standard conditions for receiving it. Legal persons as well are not subject to any domicile requirements.

FRANCE

Legal aid may be made available exceptionally for non-profit-making legal persons having their headquarters in France.

FEDERAL REPUBLIC OF GERMANY

Legal aid is available to domestic juristic persons if the intended prosecution or defence offers sufficient prospect of success and does not appear to be unreasonable if, moreover, the means necessary for such litigation can be raised neither by the indigent party nor by any other person having a financial interest therein and, finally, if the prosecution or defence of the suit is in the interest of the general public. Legal aid is not available generally for foreign juristic persons (Section 114, para 4 ZPO).

The admission of foreign juristic persons to legal aid may be arranged for by treaty.

GREECE

Yes. (Article 194, para 2, Code of Civil Procedure.)

ICELAND

Yes, but only to domestic legal persons.

ITALY

Yes (Article 15 Decreto No. 3282/1923, Articles 14 and 17 same Act).

LUXEMBOURG

Hospitals, charitable institutions, Church councils, administrations of recognised religions and scholarships and recognised mutual aid societies in the Grand Duchy. For foreign legal persons, as for individual foreigners, there must be a reciprocity agreement between Luxembourg and the country concerned. In this respect Luxembourg applies Article 20 of the Hague Convention of 1 March 1954.

NETHERLANDS

Legal aid is in principle available to legal persons on the same footing as to physical persons.

NORWAY

Legal aid is in principle available to legal persons, but there is a very restrictive practice.

PORTUGAL

The right to legal aid can be extended to groups, companies and any entity having legal personality.

SWEDEN

Legal aid is available for estates of deceased persons but not for any other kind of legal person.

SWITZERLAND

No.

TURKEY

Only for charitable societies.

UNITED KINGDOM

The Acts state that the expression "person" does not include a body of persons corporate or unincorporate so as to authorise advice or assistance or legal aid to be given to such a body. Legal aid is not, thus, available to legal persons insofar as they are corporate or unincorporated bodies, whether domestic or foreign.



CANADA

In some, though not all, jurisdictions legal aid is available to non-profit corporations or groups of persons whose members are economically underprivileged physical persons. It would appear necessary for the physical member persons to satisfy the residency requirements. Legal aid is not available for business corporations whose operations are designed to produce a profit.

FINLAND

No, only for individuals.

Question No. 3

- a. Are there any jurisdictions for which legal aid is not available (eg administrative courts or tribunals)?
- b. For which proceedings can legal aid be granted?
- c. Are there any exceptions and, if so, which (contentious and ex parte proceedings)?

Replies

AUSTRIA

Legal aid is available for all jurisdictions. It can be granted only for a specific lawsuit and an execution proceeding instituted not later than within a year from the close of the lawsuit (Article 64, para 1, Code of Civil Procedure).

BELGIUM

- a. Legal aid is available for all jurisdictions.
- b. Legal aid may be granted for:
  - 1. all acts relating to petitions to be brought or already pending before a judicial or administrative court or an arbitration tribunal;
  - 2. procedural acts concerning judgments and decisions;
  - 3. applications for ex parte proceedings;
  - 4. proceedings which come under the jurisdiction of a member of the judiciary or require action by a law official or a member of the attorney general's department.
- c. No, proceedings eligible for legal aid also include acts of voluntary jurisdiction.

CYPRUS

- a. Legal aid is not available in all matters. (No legal aid is available in bankruptcy proceedings.)
- b. Generally legal aid may be granted for all legal proceedings.
- c. It can be granted for both contentious and ex parte proceedings.

DENMARK

- a. Legal aid is available for proceedings in all courts of law.
- b. Legal aid is on principle available for all categories of proceedings.
- c. -

FRANCE

- a. Yes, administrative authorities other than the administrative courts and the "Conseil d'Etat" (except where there is a special text).
- b. Any case which comes before either a court of law other than a criminal court or before the "Conseil d'Etat", the administrative courts or the Jurisdictional Court (and in the case of a special text, before certain other authorities);  
  
any action concerning a party liable in damages brought before a trial court;  
  
any action by a party claiming damages before an examining magistrate or a trial court;  
  
any conservatory act;  
  
any application for enforcement, whether of a judicial decision or of any form of document.
- c. Legal aid is granted in both contentious and non-contentious proceedings. Legal aid does not exist for the prosecuted party in criminal proceedings; the accused then has recourse to another institution under which he is given an officially appointed lawyer (commission d'office).

FEDERAL REPUBLIC OF GERMANY

- a. In proceedings before the Social Courts which, according to Section 183 of the Social Courts Act are free from costs, legal aid is available only in respect of the costs of the appointment of a special representative under Section 72, para 5 of the Social Courts Act as well as the costs for an attorney-at-law (Rechtsanwalt) in proceedings in the Federal Social Court where, under Section 166 of the Social Courts Act, the parties have to be represented by an attorney-at-law (Rechtsanwalt) or an organisation. The assignment of an attorney-at-law is only provided for the proceedings in the Federal Social Court; in the other cases there is no obligation to be represented by counsel.
- b. Legal aid may be granted for all kinds of proceedings. As a rule, all the provisions of the Code of Civil Procedure on legal aid, or some of them, apply mutatis mutandis; Section 14 of the Non-Contentious Judicature Act; Sections 11 (a), 46 para 2, 64 para 2, 72 para 3, 78, 79 of the Labour Courts Act; Section 166 of the Statute on Administrative Courts; Section 142 of the Statute on Finance Courts; Sections 72, para 5, second sentence and 167 of the Social Courts Act. As regards legal aid in proceedings before the Patent Court, see reply to Q. 31.
- c. There are no exceptions but those mentioned under (a) above, in proceedings before the Social Courts which are free from costs.

GREECE

- a. No.
- b. For civil and commercial proceedings (and for administrative proceedings: before the State Council, by a decision taken freely by the President of the Court or of the Chamber of the State Council; if the applicant is considered to be indigent, exemption from legal dues and from the imposition of any fines).
- c. No.

ICELAND

- a. Legal aid is not available in administrative matters.  
(There are no such things as administrative tribunals in Iceland.)
- b. For all kinds of civil proceedings.
- c. No special cases are excepted, but the merit of the case concerned shall be looked into, before legal aid is granted.

ITALY

- a. No, legal aid is granted also in the case of proceedings before other administrative and jurisdictional bodies (Article 5-II Decreto 3282/1923).
- b. See above.
- c. No.

LUXEMBOURG

- a. No, legal aid is available in all matters.
- b. Legal aid may be granted for all legal proceedings.
- c. It can be granted for both contentious and ex parte proceedings.

NETHERLANDS

- a. No.
- b. All (see (a)).
- c. No.

NORWAY

- a. No.
- b. Legal aid may be granted for any proceedings conducted before the ordinary courts of law.
- c. Legal aid is granted on the basis of an overall evaluation of the case and of the applicant's personal circumstances. Inter alia, due consideration is given as to whether the applicant has reasonable grounds for obtaining a judgement in the case.

PORTUGAL

- a. & b. The Legal Aid Act specifies that its provisions shall enter into force concurrently with the implementing decree. As the only regulations published are entitled "Regulations governing legal aid in the ordinary courts" it may be claimed that the Act does not apply to courts outside the ordinary judicial system (see paragraph 31). Labour courts continue to be outside the judicial system. Workers represented by the Public Prosecutor's Department are practically exempted from legal costs.
- c. Legal aid applies both to contentious and to ex parte proceedings.

FRANCE

- a. Yes, administrative authorities other than the administrative courts and the "Conseil d'Etat" (except where there is a special text).
- b. Any case which comes before either a court of law other than a criminal court or before the "Conseil d'Etat", the administrative courts or the Jurisdictional Court (and in the case of a special text, before certain other authorities);  
  
any action concerning a party liable in damages brought before a trial court;  
  
any action by a party claiming damages before an examining magistrate or a trial court;  
  
any conservatory act;  
  
any application for enforcement, whether of a judicial decision or of any form of document.
- c. Legal aid is granted in both contentious and non-contentious proceedings. Legal aid does not exist for the prosecuted party in criminal proceedings; the accused then has recourse to another institution under which he is given an officially appointed lawyer (commission d'office).

FEDERAL REPUBLIC OF GERMANY

- a. In proceedings before the Social Courts which, according to Section 183 of the Social Courts Act are free from costs, legal aid is available only in respect of the costs of the appointment of a special representative under Section 72, para 5 of the Social Courts Act as well as the costs for an attorney-at-law (Rechtsanwalt) in proceedings in the Federal Social Court where, under Section 166 of the Social Courts Act, the parties have to be represented by an attorney-at-law (Rechtsanwalt) or an organisation. The assignment of an attorney-at-law is only provided for the proceedings in the Federal Social Court; in the other cases there is no obligation to be represented by counsel.
- b. Legal aid may be granted for all kinds of proceedings. As a rule, all the provisions of the Code of Civil Procedure on legal aid, or some of them, apply mutatis mutandis; Section 14 of the Non-Contentious Judicature Act; Sections 11 (a), 46 para 2, 64 para 2, 72 para 3, 78, 79 of the Labour Courts Act; Section 166 of the Statute on Administrative Courts; Section 142 of the Statute on Finance Courts; Sections 72, para 5, second sentence and 167 of the Social Courts Act. As regards legal aid in proceedings before the Patent Court, see reply to Q. 31.
- c. There are no exceptions but those mentioned under (a) above, in proceedings before the Social Courts which are free from costs.

GREECE

- a. No.
- b. For civil and commercial proceedings (and for administrative proceedings: before the State Council, by a decision taken freely by the President of the Court or of the Chamber of the State Council; if the applicant is considered to be indigent, exemption from legal dues and from the imposition of any fines).
- c. No.

ICELAND

- a. Legal aid is not available in administrative matters.  
(There are no such things as administrative tribunals in Iceland.)
- b. For all kinds of civil proceedings.
- c. No special cases are excepted, but the merit of the case concerned shall be looked into, before legal aid is granted.

ITALY

- a. No, legal aid is granted also in the case of proceedings before other administrative and jurisdictional bodies (Article 5-II Decreto 3282/1923).
- b. See above.
- c. No.

LUXEMBOURG

- a. No, legal aid is available in all matters.
- b. Legal aid may be granted for all legal proceedings.
- c. It can be granted for both contentious and ex parte proceedings.

NETHERLANDS

- a. No.
- b. All (see (a)).
- c. No.

NORWAY

- a. No.
- b. Legal aid may be granted for any proceedings conducted before the ordinary courts of law.
- c. Legal aid is granted on the basis of an overall evaluation of the case and of the applicant's personal circumstances. Inter alia, due consideration is given as to whether the applicant has reasonable grounds for obtaining a judgement in the case.

PORTUGAL

- a. & b. The Legal Aid Act specifies that its provisions shall enter into force concurrently with the implementing decree. As the only regulations published are entitled "Regulations governing legal aid in the ordinary courts" it may be claimed that the Act does not apply to courts outside the ordinary judicial system (see paragraph 31). Labour courts continue to be outside the judicial system. Workers represented by the Public Prosecutor's Department are practically exempted from legal costs.
- c. Legal aid applies both to contentious and to ex parte proceedings.

SWEDEN

- a. No, legal aid is available in all kinds of matters.
- b. Legal aid can be granted for all sorts of proceedings if the applicant needs the aid.
- c. Legal aid can be granted both for contentious and ex parte proceedings.

SWITZERLAND

- a. There are exceptions concerning the administrative courts of certain cantons, where legal aid is limited to court costs. On the other hand in the field of social insurance, certain procedural matters, including the right to legal aid and legal advice, are governed by federal law.
- b. For all proceedings.
- c. Execution for a sum of money or to enforce securities are governed by a Federal law, the Federal Bankruptcy and Execution Act of 11 April 1889. There is no provision for legal aid in this case.

TURKEY

- a. No.
- b. For all proceedings.
- c. None.

UNITED KINGDOM

The courts and proceedings for which legal aid is available are set out in the Acts. Legal aid is available for almost all forms of civil proceedings in the House of Lords, the Court of Appeal, the High Court and county courts and the corresponding Scottish courts. Certain types of proceedings are specifically excluded. These include defamation proceedings. In magistrates' courts legal aid is available for certain proceedings which are specifically listed in the schedule; these rules relate to family matters and include, for example, adoption proceedings, affiliation proceedings and matrimonial proceedings relating to separation and maintenance.

Legal aid is not available for proceedings before the Judicial Committee of the Privy Council, which hears appeals from certain commonwealth courts and from disciplinary decisions of certain professional bodies (for example by doctors and dentists). Nor is it available for proceedings before coroners, nor before the Court of Protection (which is responsible for administering the financial affairs of those who are mentally incapable of doing so themselves).

Legal aid is not generally available for proceedings before tribunals. The only ones for which it is available are the Commons Commissioner, the Lands Tribunal and the Employment Appeal Tribunal.

CANADA

- a. and b. In most provinces legal aid in civil matters is available to persons otherwise entitled in respect of proceedings in all courts. Legal aid is discretionary but may be available in small claims courts, before quasi-judicial or administrative boards, in bankruptcy proceedings, for

drawing documents, negotiating settlements or giving legal advice whatever the subject, and on appeals to both courts, quasi-judicial bodies and administrative tribunals.

- c. All provinces which provide civil legal aid exclude a small group or civil matters which include such matters as:
  - i. proceedings wholly or partly in respect of defamation, breach of promise of marriage, loss of service of a female in consequence of rape or seduction, alienation of affections or criminal conversation;
  - ii. relator actions;
  - iii. proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings; and
  - iv. proceedings relating to elections.

#### FINLAND

- a. Legal aid is in general not available in administrative matters (1) except for cases before a Provincial Administrative Court or the Supreme Administrative Court concerning the commitment of the applicant to a workhouse or to a treatment institution for alcoholics (administrative deprivation of liberty).
- b. According to the Act on Legal Aid in Court Proceedings legal aid is available:
  - 1. in courts of law in all kinds of litigation and in certain non-trial matters (petitions);
  - 2. in cases tried by a court martial;
  - 3. in cases before a Water Tribunal or a Land Tribunal;
  - 4. in cases before a Provincial Administrative Court or the Supreme Administrative Court concerning the commitment of the applicant to a workhouse or to a treatment institution for alcoholics;
  - 5. in a case concerning the reversal of a decision already come into force (res judicata) or a petition for restoration of certain time lost in cases indicated in the points 1 to 4 above.
- c. No. Legal aid does not depend on the type of proceedings.

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(1) According to the Act on Public Legal Aid legal advice is given in all kinds of legal matters. See Q 32-35.



Question No. 4

Who grants legal aid?

Replies

AUSTRIA

Applications for granting legal aid have, as a rule, to be decided upon by the trial judge of the first instance even if need therefore arises only in the proceedings before a higher instance (Article 65, para 2, Code of Civil Procedure).

BELGIUM

In the case of law-suit costs and the free services of law officials and members of the attorney general's department, legal aid may be granted by court decision. This decision is normally taken by the legal aid office, a special department set up within each Court of First Instance. Under Article 670 of the Judicial Code, applications for legal assistance should be made to the office of the court responsible for dealing with the case or at the place where the proceedings are to be carried out, as the case may be.

They should, however, be submitted to the office of the Court of Cassation, the office of the Court of Appeal or Labour Court, the Magistrate's Court and the Police Court, when the dispute comes under their competence or the legal Act to be performed falls within their sphere of responsibility.

For urgent matters of any nature, the President of the court or tribunal and, once proceedings have commenced, the judge dealing with the case, may, on application by the client, even in oral form, order aid to be granted for any step in the proceedings which they shall determine.

The granting of legal aid does not include the nomination of the lawyer, competence for which is vested in the Advice and Protection Bureau set up in each area by the Council of the Order of Barristers. (See Q 14.)

In practice, application is made first to the Advice and Protection Bureau for the appointment of a lawyer, who then lodges the request for legal aid.

CYPRUS

Under Order 8, Rule 1, of the Civil Procedure Rules the court or a judge may admit a person to sue or defend as a pauper except in bankruptcy proceedings.

DENMARK

For the Court of First Instance legal aid shall be authorised by the counties. For the Court of Second Instance, and in cases where the applicant is a collective body legal aid shall be authorised by the Ministry of Justice. In appeal cases the Ministry of Justice is competent.

FRANCE

Legal aid bureaux attached to the various courts.

FEDERAL REPUBLIC OF GERMANY

The court competent to deal with the main cause of the action is also competent to decide on legal aid.

GREECE

The magistrate, the judge of the Regional Court, the President of the tribunal or court dealing with the case in respect of which legal aid has been requested. For ex parte proceedings, the magistrate at the applicant's place of residence.

ICELAND

The Minister of Justice.

ITALY

In civil matters, the Legal Aid Commission, set up at any court, Court of Appeal and at the highest Court of Cassation (Article 5 Decreto 3282/1923); in criminal matters, the judge who is in charge of the proceedings (Article 29 Decreto 3282/1923); in administrative matters, the Legal Aid Commissions, envisaged by Articles 6-7 Decreto 3282/1923 in the case of proceedings before the Council of State and now before the regional administrative courts as well as before the Provincial Administrative Council.

LUXEMBOURG

The judge due to hear the case, after notification of the Public Attorney's Office.

NETHERLANDS

The Legal Aid Board in the district concerned (there are 19 districts in the country) designates a legal adviser (lawyer or bailiff (huissier)). On a Legal Aid Board are mainly lawyers, one or two bailiffs and occasionally a social worker. In case legal aid is given for proceedings in civil courts, the decision is subject to confirmation by the court. (There are no special commercial courts in the Netherlands.) Exception of court costs should be granted by the jurisdiction concerned,

NORWAY

Applications for legal aid are decided by the Ministry of Justice and in cases relating to family law also by the court itself.

PORTUGAL

The judge conducting the trial.

SWEDEN

The Legal Aid Board. (There are six boards in Sweden.)

SWITZERLAND

As a general rule, the court competent to deal with the case or its president. In two cantons, it is the legal administration, in one canton the government, in another a special cantonal office, and in another the authorities of the district where the applicant resides or from which he originates.

TURKEY

The courts decide on applications for legal aid.

UNITED KINGDOM

The Law Societies are responsible for the grant or refusal of legal aid. This duty is carried out through area and local committees throughout the country. If legal aid is granted a legal aid certificate is issued to the applicant.

CANADA

The official granting legal aid will vary from province to province. The decision whether or not to grant legal aid is usually made by a local official of the legal aid programme. In plans utilising mainly salaried lawyers they are usually involved in the decision. In plans utilising members of the private bar this decision is usually made by the area director of legal aid. In appellate matters the decision is usually made by a committee.

The financial cost of legal aid is in all cases borne by either paying and maintaining staff lawyers or by paying the fees and disbursements of members of the private bar.

FINLAND

Legal aid is granted by the court or if the court is not in session by a single judge temporarily to be in force until the court assembles. If the application for legal aid is rejected, an appeal may be lodged separately.

Question No. 5

What are the financial conditions for eligibility? In particular:

- a. What are the methods of assessing the applicant's financial position? eg:
  - What, if any, are the financial limits below which a person is eligible for legal aid (eg income, capital, property disregarded, maintenance obligations, etc)?
  - If so, how are changes in the cost of living taken into account?
  - Is account taken of the financial position of the applicant in relation to the expected cost of the proceedings?
- b. Are there any circumstances in which legal aid may be granted without the applicant necessarily having to fulfil the financial requirements (eg children born out of wedlock)?

Replies

AUSTRIA

Legal aid has to be granted to a party to the extent that he is unable, without impairing the necessary subsistence, to bear the costs of a proceeding in respect of which legal aid has been applied for. The necessary subsistence is deemed to be such as is needed by the party to ensure a plain living for himself and his family whom he is liable to support (Article 63, para 1, Code of Civil Procedure). In considering the pecuniary circumstances given in a specific case account will have to be taken of the conditions of life (eg health, earning capacity of the applicant). The term of plain living is an objective concept denoting the standard of an absolutely modest living, which, however, can be understood in a relative sense to mean that account should be taken of the needs of the individual party and the funds required to maintain his mental and physical personality and his earning capacity. The term of family or the group of persons it denotes is understood to refer to those persons whom the applicant has actually to support, ie including, for instance, the persons not entitled to maintenance (source: explanatory memorandum to the Government Bill for the Legal Aid Act). The applicant's financial position is checked on the basis of a statement of pecuniary circumstances to be filled in by the party and attached to the application (official form ZP Form 1). Supporting documents have to be enclosed or may be subsequently required by the court. Entry of incorrect data in the form entails consequences under both civil and criminal law. No financial limits are stipulated. There is no provision dealing with circumstances in which legal aid may be granted without the applicant necessarily having to fulfil the financial requirements.

### BELGIUM

The financial conditions for eligibility for legal aid proper and for the appointment of a lawyer are as follows:

Inadequate income compared with the expected costs of the proceedings:

- a. The law does not specify any financial limits below which a person is eligible for legal aid; the court treats each case on its own merits, taking account of the financial situation of the applicant in relation to the probable costs of the legal proceedings.
- b. There are no special provisions stipulating that legal aid may be granted without the applicant necessarily having to fulfil the financial requirements.

### CYPRUS

Order 2, Rule 1 (i) and (ii) of the Civil Procedure Rules provides that the court or a judge may admit a person to sue or defend as a pauper if satisfied that he is not worth £100 (excluding wearing apparel, bed and bedding, and the subject matter of the action) and that his usual income from all sources does not exceed £5 a week.

The changes in the cost of living as well as the financial position of the applicant in relation to expected costs of the proceedings are not taken into account.

There are no circumstances in which legal aid may be granted without the applicant necessarily having to fulfil the financial requirements quoted above.

### DENMARK

- a. In respect of income the financial limit below which a person is eligible for legal aid has long been identical to the amount which determines whether a person belongs in group I or II of the public health insurance scheme. In the past this limit was adjusted once a year. The limit is somewhat higher in the metropolitan area than elsewhere and is higher for persons with dependants as opposed to persons without dependants. The limit is raised substantially for each child. For example, in the metropolitan area the limit for a family with three children today stands at Dkr. 139,600 taxable income, equal to £11,120 and FF 100,000.

The limit on capital is currently Dkr. 200,000 (approx. £15,910 or FF 143,885) although an applicant may not have liquid assets exceeding Dkr. 25,000 (approx. £1,989 or FF 17,985).

In determining whether a married person qualifies for legal aid the combined income of the couple shall be taken into account.

The limits are not rigid. Where the costs incident to the processing of the case are immaterial compared to the financial circumstances of the applicant legal aid shall not be granted.

- b. The financial limits may be deviated from where an applicant is found to be in particular need of assistance or where unusually heavy legal costs are foreseen.

In addition, some categories of cases involve automatic appointment of a lawyer, e.g. for the respondent in a matrimonial case.

FRANCE

- a. All income except family allowances, and capital other than housing. Furthermore, the bureaux may take into consideration the resources of persons living in the household of the beneficiary.
- Full legal aid: monthly income not exceeding 1,500 F.
  - Partial legal aid: monthly income of between 1,501 F and 2,500 F when representation by a barrister or a solicitor is compulsory, between 1,501 F and 2,000 F in other cases.
  - Statutory readjustment of ceilings in the light of economic developments.  
No.
- b. The legal aid bureau may, exceptionally, grant legal aid to applicants who do not fulfil the financial requirements when their situation seems particularly deserving with regard to the subject of litigation or the foreseeable costs of the case.

FEDERAL REPUBLIC OF GERMANY

- a. The applicant must be unable to pay the costs of the proceedings without endangering his own necessary maintenance and that of his family (Section 114, para 1, first sentence, ZPO). The amount of this necessary maintenance is not laid down in the Code, but is determined in accordance with the circumstances of the individual case. In particular, the amount of the prospective costs of the suit, the applicant's reasonable other obligations and disposable resources as well as the trend of the cost of living will be considered. In many cases the courts, when calculating the necessary family maintenance, use the limits for the attachment of wages (Sections 850 (c), of the ZPO) as guidelines.

A certificate must be produced in which the competent authority - stating the party's profession or trade, financial circumstances, family status, and the amount of direct taxes to be paid by him - explicitly confirms his inability to bear the costs of the proceedings (Section 118, para 2, first sentence, of the ZPO).

- b. No; however, a child born out of wedlock is presumed to be indigent. If he claims maintenance from his father, a certificate of his indigence need not be produced (Section 118, para 2, second sentence, second clause, of the ZPO).

GREECE

- a. & b. The competent court decides on its own responsibility taking account of the applicant's resources, which are estimated by all means available.

ICELAND

- a. That the person is so indigent, that he can not afford the proceedings. This is estimated on the bases of his tax report, a certificate from the tax assessing authority, the size of his family and his financial conditions on the whole. There is no fixed financial limit below which a person is eligible for legal aid, but it is left to the discretion of the Minister of Justice in each case. The financial position of the applicant in relation to the expected cost of the proceedings is taken into account.

- b. Yes, in a paternity case the actor (be it the mother or supporter of the child) is always granted legal aid before the lower courts, irrespective of his financial situation. Legal aid can also be granted to the actor in these proceedings before the Supreme Court if the actor is considered to have more chances of winning the case than the defendant (the alleged father or his estate).

If a person is wrongly apprehended, bodily searched, put under protective custody, indicted, or sentenced to imprisonment he can sue the State for damages by starting civil proceedings against the State. In such civil proceedings the person concerned is entitled to legal aid both before the lower courts and the Supreme Court.

In separation and divorce proceedings partial legal aid can be granted to pay a lawyer's fee, if the judge finds it necessary to appoint a spokesman for either or both of the parties.

#### ITALY

- a. The financial conditions of the person who is asking to be eligible for legal aid are determined by the amount of the land-tax, by the amount of the income-tax as well as by a general evaluation of his economic conditions ascertained by means of certificates issued by the municipality of which he is a resident or where he was borne; absolute poverty is not required, the person in question is only requested to be unable to bear the costs of a proceedings (Articles 15-16 Decreto 3282/1923).
- b. Yes. Eligible for legal aid are:
  - 1. Persons unable to work in order to promote the sentence for alimony for their relatives (Article 155 TU Pubblica Sicurezza RD 18 June 1931 n. 773).
  - 2. War orphans, in the case of all sentences relating to guardianship (Article 41 Act N 365 of 13 March 1958).
  - 3. In the case of disputes dealing with leases of urban real estates, the magistrate may grant legal aid to the indigent party, even ex officio. (Article 30 Act No. 253 of 23 May 1950.)

#### LUXEMBOURG

- a. Applications for legal aid must be accompanied by a certificate of indigence issued in duplicate by the Mayor and aldermen of the municipality in which the applicant lives, on production of a further certificate from the Inland Revenue, also in duplicate, showing his tax position. The Mayor and aldermen take advice from the municipality's Social Office, which applies the following criterion: a person left with not more than 5,500 Frs a month to live on, after payment of rent, is deemed indigent. This criterion obviously varies according to circumstances and is not applied inflexibly.
- b. Luxembourg law provides for no exceptions to this financial requirement.

#### NETHERLANDS

- a. The financial limits for eligibility for legal aid are set by the Legal Aid Boards and the presidents of the district courts and may therefore vary from district to district. Most districts use the Amsterdam scale shown in Appendix III (Table III) to this document. The scales are revised twice a year to take account of changes in the cost of living. The expected cost of the proceedings is not taken into account in applying the income and property limits.
- b. No (but these children generally have neither income nor property).

#### NORWAY

- a. Normally legal aid is granted to those who find it difficult to cover the cost of the proceedings. However, no specific limits have been established with regard to the applicant's capital assets or income. Thus the authorities may take into account the expected cost of the proceedings.
- b. The requirement as to financial indigence forms a part of the overall evaluation of an application for legal aid. This requirement will therefore vary somewhat; thus in cases involving important points of principle, the requirement as to financial indigence will not be very strictly applied.

#### PORTUGAL

Any person applying for legal aid must prove that he has insufficient means.

- a. In each case, the judge estimates the economic situation of the party and compares it with the probable cost of the trial. No specific limits have been calculated. Tax payable, family responsibilities, etc of the applicant are always taken into consideration as is the rise in the cost of living.
- b. Means are assumed to be inadequate in the case of persons applying for maintenance, victims of road accidents and minors whose paternity or maternity is being investigated. These assumptions are tantum juris.

#### SWEDEN

- a. See Mr Hellners' report p 5-6 (Appendix VI to this document, pp. 199-200).
- b. In certain enumerated administrative legal matters the Legal Aid Board may appoint an official assistant to the person concerned. For this kind of legal aid there are no economic requirements (see Mr Hellners report p 10-11, Appendix VI, to this document, p. 203).

#### SWITZERLAND

- a. A comparison is made between the applicant's income and capital and the probable cost of the trial (court and lawyers' costs).

Those who cannot afford the costs at the same time as maintaining themselves and their families are entitled to legal aid.



The right to legal aid does not depend on any fixed levels of income or capital. The financial position of the applicant is examined in each case. In order to calculate the applicant's maintenance expenses, the judge may refer to the "rules for calculating minimum subsistence in legal proceedings" which are published periodically by the Conférence des préposés aux offices des poursuites et faillites de Suisse (Conference of the Heads of the Swiss Prosecution and Bankruptcy Offices) and who adjust this minimum to the Swiss cost of living index.

b. No.

#### TURKEY

a. Each application for legal aid must be accompanied by a certificate issued by the local authority stating the applicant's income, capital and job, the amount of tax paid by him and the situation of his family. It is also necessary to show that the applicant is not able to pay the probable legal costs.

b. No.

#### UNITED KINGDOM

Financial eligibility for legal aid is calculated by reference to the applicant's disposable income and capital (that is his net income and capital after certain allowances and deductions have been made). These are assessed by the Supplementary Benefits Commission, which is the official authority responsible for the payments of social security benefits generally. Legal aid is at present available to anyone whose disposable income does not exceed £2,085 a year and whose disposable capital is not more than £1,400. If the capital exceeds this figure legal aid may only be granted if the estimated costs of the proceedings are likely to exceed the applicant's maximum contribution. There is, thus, a rigid limit on income but a discretion as regards capital. Disposable income and capital are defined as the rate of the applicant's income or amount of his capital after making certain deductions in respect of the maintenance of dependents, income tax, rates, rent and other matters for which the person in question must or reasonably may provide. The value of a dwelling owned by the applicant is ignored unless, after deducting the amount of any mortgage, it exceeds £6,000, in which case one half of the excess is normally taken into account. An applicant's resources are treated as including those of his spouse unless the parties have a contrary interest in the dispute, as in matrimonial proceedings. In all cases the value of the subject matter of the dispute in respect of which application has been made for legal aid is excluded. Disposable income is assessed as the net income the applicant is likely to receive in the twelve months following his application for legal aid; disposable capital is normally taken to be the applicant's net capital as at the date of application.

Changes in the cost of living are taken into account by reviewing the income limits for legal aid regularly (annually or bi-annually) in line with increases in social security benefits, which are made to take account of inflation.

Account is taken of the financial position of the applicant in relation to the expected costs of the proceedings to the extent that if his disposable capital exceeds £1,400 legal aid may only be granted, as is stated above, if the estimated costs of the proceedings are likely to exceed his maximum contribution.

There are no circumstances in which legal aid may be granted without the applicant having to fulfil the financial requirements.

### CANADA

a. The financial position of the applicant is usually assessed by an appropriate local official (in some provinces a lawyer, in others an official of the provincial legal aid plan or social services department) who interviews the applicant and whose decision is usually based on a sworn listing of the applicant's assets and liabilities. The financial guidelines vary from province to province. Some provinces have not established financial guidelines. In these provinces the test is whether the applicant would be required to dispose of modest necessary assets or to incur indebtedness resulting in financial hardship in meeting the cost of a lawyer. If he would have to, he is then eligible for legal aid.

In all jurisdictions income, disposable capital, indebtedness, maintenance obligations, and such other circumstances as may appear relevant are considered in deciding eligibility for legal aid. Similarly, in all provinces, income tests and financial eligibility criteria are applied in a flexible manner.

In the provinces with financial tests, these are usually applied in a flexible manner. The average maximum income for eligibility for legal aid for a single person is about \$5,000. This increases to approximately \$6,000 for a couple and to approximately \$7,000 for a couple with two dependants.

Increases in the cost of living are accommodated automatically in those provinces with no financial guidelines. Where financial guidelines exist these are periodically adjusted upward by regulation to meet increased living costs.

Generally speaking, the relationship of the financial position of the applicant to the expected cost of the proceedings is considered, although it is usually not a decisive factor in determining eligibility for legal aid.

b. Generally speaking, in all cases the financial guidelines must be met in order for an individual to be eligible for legal aid, although, as noted earlier, these are in all cases applied flexibly.

### FINLAND

a. The applicant is required to provide a written affidavit of his financial conditions and maintenance obligations as well as other necessary information obtainable. The affidavit must be certified by a municipal officer. Certification may be waived if the applicant's domicile cannot be ascertained without difficulty or if the statement in the affidavit is obviously a true one. A decree stipulates that the statement of a foreigner shall be certified by the diplomatic representation of the applicant's native country. Certification shall not be demanded, if the applicant's native country has no representation in Finland.

Legal aid is not fixed to any statutory income or means limit. Because legal aid is granted by the proper court, the income and means limits applied may to some extent differ in various courts.

The expected costs of the proceedings are not as such taken into account when granting legal aid.

b. No.

Question No. 6

- a. Must it be established that a person applying for legal aid in your country has any prospect of success in the matter for which he seeks legal aid?
- b. How thoroughly is this question examined?
- c. Can you give any indication as to the proportion of applications refused on this ground?

Replies

AUSTRIA

Apart from the other requirements, legal aid has to be granted to a party if the envisaged plaint or defence does not seem obviously wilful or hopeless. A plaint is deemed wilful in particular if a party applying for legal aid, after reasonable evaluation of all circumstances involved and especially the prospects of enforcing his claim, would refrain from taking action or assert only part of the claim (Article 63, para 1, Code of Civil Procedure). The question as to the prospects of a proceeding is first examined on the basis of the party's statement without special inquiries being made. The proportion of applications refused on the grounds of hopelessness or wilfulness is not covered by statistics, but it is probably extremely small.

BELGIUM

In its task of protecting indigents, the Advice and Protection Bureau normally refrains from appointing a lawyer only if the lawsuit appears manifestly ill-founded (Article 455, sub-paragraph 1, Judicial Code). The Legal Aid Office must ascertain whether the claim seems justified (Article 667, Judicial Code).

This question is not examined very thoroughly.

The Legal Aid Office attempts, however, to reconcile the parties, after hearing both sides.

CYPRUS

- a. It must always be established that a person applying for legal aid in Cyprus has prospects of success in the matter for which he seeks legal aid. Such application must be accompanied by an advocate's opinion to that effect.
- b. The said application is always dealt with by a judge.
- c. No indication as to the proportion of applications refused on this ground can be given, as no statistics are kept.

DENMARK

To qualify for legal aid the applicant must show reasonable cause for instituting proceedings. This condition implies an assessment of the prospects the applicant has of winning his case. A majority of unsuccessful applications are refused precisely because this condition has not been fulfilled.

FRANCE

Yes, but only if the action is manifestly inadmissible or ill-founded. Small proportion of refusals.

FEDERAL REPUBLIC OF GERMANY

- a. The intended prosecution or defence must offer sufficient prospect of success (Section 114, para 1, first sentence of the ZPO).
- b. The court examines whether the intended prosecution is admissible and conclusive and whether the applicant has proffered enough evidence. It may demand that the petitioner furnish prima facie evidence to support his allegations and - if it can be done without considerable delay - the court may investigate the case and, in particular, order the submission of documents and request information from public authorities. The hearing of witnesses and expert witnesses is permissible only if the facts cannot otherwise be sufficiently clarified (Section 118 (a), para 1, of the ZPO). As a rule, the defence of a defendant asking for legal aid is deemed to have sufficient prospect of success if he disputes the plaintiff's allegations in detail. Legal aid may not be granted if the intended prosecution or defence appears to be unreasonable (Section 114, para 1, first sentence, of the ZPO). According to the wording of the law, such prosecution must *inter alia* be regarded as unreasonable if, having regard to the prospects of enforcing the claim, a party not asking for legal aid would desist from bringing proceedings or would assert only a part of the claim (Section 114, para 1, second sentence of the ZPO). Other cases of unreasonableness would, eg be to initiate legal proceedings although the prospect of successful execution of any judgment passed would be extremely little, or not to choose the cheapest way of prosecution or initiate legal proceedings precipitately.

The higher court, when granting legal aid, shall not examine the prospect of success of the prosecution or defence if the indigent party's opponent has filed the appeal (Section 119, para 2, second sentence of the ZPO).

If the intended prosecution or defence offers only a partial prospect of success legal aid may be limited accordingly.

- c. The statistics do not differentiate between the various reasons for refusing applications for legal aid. In 1975 the courts of first instance of the Länder dealt with 1,414,176 civil proceedings. The plaintiff was granted free legal aid in 67,299 cases, the defendant in 18,902. In 7,610 civil cases before courts of first instance the plaintiff's application for legal aid was refused, in 1,908 cases the defendant's. Consequently, of a total of 95,719 applications for legal aid 9,518 petitions or 9.94 % were refused (Federal Statistical Office, Wiesbaden, Population and Culture, Series No. 9, Administration of Justice, 1975).

GREECE

When a person requests legal aid, it must be ascertained that the lawsuit concerned has some chance of success. This question is not examined very thoroughly (Article 197, para 1, Code of Civil Procedure).

ICELAND

- a. Yes.
- b. A lawyer working in the Ministry of Justice talks with the applicant, or his lawyer and examines the existing documents.
- c. Of written applications, approximately 45% were turned down last year.

ITALY

Yes. The chance of a successful outcome of the proceedings is the essential condition to be admitted to legal aid (Article 15 - Decreto 3282/1923); the question is to be examined by the Legal Aid Commission and the opposing party is given the possibility to intervene in order to deny the supposed indigence, to give an explanation on the merits and set forth his objections (Article 20 Decreto 3282/1923). Nearly 30% of the applications for legal aid are rejected being clearly groundless.

LUXEMBOURG

The judge summons the parties and hears their explanations regarding both the alleged indigence and the merits of the case. If there is a case to be answered and indigence is proved, the judge grants the application and appoints ushers and a lawyer to act for the recipient of legal aid.

NETHERLANDS

- a. Yes. And the value of the interest at stake compared to the cost of proceedings, is taken into account.
- b. Superficially.
- c. Less than 5% of all applications are refused on any grounds.

NORWAY

- a. The requirement that the applicant's case is actionable at law forms a part of the overall evaluation of the application.
- b. The requirements as to financial indigence and that the case is actionable at law are the two most important prerequisites for obtaining legal aid. The question as to whether the case is actionable at law is therefore assessed relatively carefully.
- c. Approximately 1/3 of the total number of applications for legal aid are refused, and as a rough guide about one third of these refusals are due to the case not being considered actionable at law.

#### PORTUGAL

An applicant for legal aid who is not yet represented by a barrister must begin by applying to the judge to have ex officio counsel appointed (patrono officioso). If the relevant court does not have counsel available, or if the only barrister attached to that court is prevented by factual or ethical reasons from accepting the case, the patrono officioso may be a barrister in pupillage, a solicitador (agent or professional business agent responsible for judicial affairs not touching on questions of law), the public prosecutor's representative attached to the court in question or even a law officer.

The patrono officioso advises the applicant for legal aid on the case. If he thinks that the applicant's claim for aid is unjustified he must tell him so and inform him that he may apply to the judge for the appointment of another patrono officioso; the first patrono officioso is no longer bound by professional secrecy and may ask the judge to be relieved of the duty by giving his reasons for refusing to represent the applicant.

This machinery acts as a "filter" to prevent legal actions concerning claims with no chance of success.

Once an action has been brought, the judge is, in theory, obliged to order the hearing of the other party.

If the judge considers it essential, he may call for supplementary information, after which he grants or refuses the application for legal aid.

The judge's decision is based on examination of the dossier compiled solely on the basis of information given by the applicant or the other party, or resulting from any other action deemed to be essential. This is a summary investigation with no effect on the decision on the case itself.

Rejection of the application for legal aid can be based only on obvious legal or factual inadmissibility. This is the reason for the very small number of rejected applications recorded.

#### SWEDEN

- a. Legal aid is not awarded unless the applicant has a justifiable interest in procuring consideration of his case. That does not, of course, mean that the applicant must be successful in the proceedings to be granted legal aid.
- b. This examination is rather summary so as to avoid the risk of denying the applicant access to justice.
- c. No, there are no statistics available.

#### SWITZERLAND

Legal aid is granted when the trial is not bound to fail from the beginning. Only a summary examination is made. Generally speaking, refusal to grant legal aid because the case is bound to fail is unusual.

#### TURKEY

- a. Yes.
- b. Not very thoroughly.

#### UNITED KINGDOM

Legal aid will not be granted unless the appropriate committee of the Law Societies is satisfied that the applicant has reasonable grounds (in Scotland, substantial grounds) for taking, defending, or being a party to the proceedings and it is reasonable for him to receive legal aid in the particular circumstances of the case. The question of reasonable grounds is primarily a legal one as to whether, on information put forward and the law relating to it, there is a case or defence which is reasonably likely to succeed. The onus of satisfying the committee of this lies on the applicant. The question whether it is reasonable for the applicant to receive legal aid is a wider test, which requires the committee to consider the merits of the application generally and confers a discretion on them. For example, the committee will, among other things, take into account the benefit that the applicant is likely to derive from the proceedings and if he would gain only a trivial advantage, they will normally refuse the application. In applying the test, the committee will normally consider whether in the circumstances a private person of adequate means would be advised by his solicitor to take the proceedings. They give the matter thorough consideration: for example, they may request further information from the applicant or his solicitors or they may limit the grant of legal aid in the first instance to obtaining counsel's opinion as to the merits of the case.

It is not possible to give any accurate estimate of the proportion of applications refused because the applicant does not have a reasonable case, but it is relevant that legally aided persons are successful in their proceedings in over 80% of cases.

#### CANADA

- a. In most cases the person seeking legal aid must establish the possibility of the existence of the right which he seeks to assert through legal aid.
- b. This varies from province to province but in general the merits of the matter are not gone into in depth at this point.
- c. The 'merits' of a case does not form a substantial consideration in criminal matters. In civil cases, an opinion letter may be requested and reviewed by an area director or a local committee.

#### FINLAND

- a. - c. There is no particular provision, according to which it must be established that the case is likely to be successful (prima facie case).

Question No. 7

Are there any other special circumstances in which legal aid would be granted or refused (eg when the application is made by an agent or by someone holding a power of attorney or if it concerns an important case) ?

Replies

AUSTRIA

Apart from the requirements mentioned in the foregoing, there are no specific circumstances provided by law in which legal aid can be granted or refused.

BELGIUM

The law does not provide for any special circumstances in this respect.

CYPRUS

There are no special circumstances in which legal aid would be granted or refused.

DENMARK

See reply to Q 5.

FRANCE

No, except as in the reply to Q 5 (a).

FEDERAL REPUBLIC OF GERMANY

A person being a party by virtue of his office (eg the executor of a will or the receiver in bankruptcy) may be granted legal aid if neither the property under his administration nor any persons having a financial interest in the prosecution of the case can bear the costs of the proceedings (Section 114, para 3 of the ZPO).

Granting legal aid on account of special circumstances, such as the extraordinary importance of the case, in disregard of the other requirements of legal aid, is alien to the conceptions of German law.

GREECE

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ICELAND

Legal aid can be granted to churches, schools, and hospitals, that are financed from public funds, to local governments and municipalities and to establishments, that have the aim to care for sick people and to other non-profit making humanitarian organisations.



ITALY

No.

LUXEMBOURG

No.

NETHERLANDS

No.

NORWAY

As mentioned above an application for legal aid is decided on the basis of an overall evaluation, under which such criteria as the applicant's financial circumstances, whether the case is actionable at law, the applicant's culpability in resorting to legal action, the importance of the case on points of principle and its importance for the applicant's welfare as well as the relative strength of the contending parties are given due consideration.

PORTUGAL

As far as the granting of legal aid is concerned see the cases indicated in the reply to Question 5.

Aid must be refused to persons who have transferred or mortgaged all or part of their property in the hope of thus qualifying for legal aid, and to the transferees of the right or object in dispute even if the transfer was prior to the fraud, if any.

SWEDEN

No.

SWITZERLAND

In principle, no. Refusal to grant legal aid is conceivable if the application is obviously abusive eg when a chose in action is assigned to an indigent person so that he may obtain legal aid for its enforcement.

TURKEY

No.

UNITED KINGDOM

No.

CANADA

In most of the provinces legal aid will be refused if it concerns: a matter in which the applicant is concerned in a representative or fiduciary capacity; if a fund exists out of which the costs of litigation could be met; if the matter for which legal aid is applied for is frivolous, vexatious or an abuse of the process of the court; if the relief sought can bring no relief to the applicant over and above the benefit that would accrue to him as a member of the public; or if the relief sought, if obtained, would be enforceable in law.

Recently, provision was made in supplementary agreements on legal aid between Canada and the provinces, permitting the provinces in criminal legal aid cases to define circumstances in which an applicant may be determined to be ineligible for legal aid by reason of being charged repeatedly with similar offences for which previous convictions have been recorded, the total amount of legal aid received, or non-residence in Canada.

FINLAND

Legal aid shall not be granted when the matter at issue is of little significance for the party concerned or the plaintiff's claim is based on a transferred right and there is reason to presume that the transfer has taken place for the purpose of obtaining legal aid.

Question No. 8

Are the criteria mentioned under Questions 5 and 6 applied differently to aliens?

Replies

AUSTRIA

The criteria mentioned under Questions 5 and 6 are not differently applied to nationals and aliens.

BELGIUM

The criteria mentioned under questions 5 and 6 are the same for aliens as for nationals.

CYPRUS

The criteria mentioned under Questions 5 and 6 above are not applied differently to aliens.

DENMARK

No.

FRANCE

No.

FEDERAL REPUBLIC OF GERMANY

No.

GREECE

No.

ICELAND

No.

ITALY

No.

LUXEMBOURG

The criteria are the same for nationals and aliens.

NETHERLANDS

No.

NORWAY

No.

PORTUGAL

No.

SWEDEN

No.

SWITZERLAND

No.

TURKEY

No.

UNITED KINGDOM

No.

CANADA

No.

FINLAND

No.

Question No. 9

What costs relating to the proceedings are covered by legal aid:

- a. court costs (court fees and taxes, usher's (huissier) costs, costs relating to witnesses and experts);
- b. the personal costs of the legally aided person (including travel and subsistence expenses when the court requires him to appear in person);
- c. costs of the lawyers (fee and expenses);
- d. payment of security (cautio judicatum solvi);
- e. other costs?

Replies

AUSTRIA

Legal aid may comprise the following benefits:

1. temporary exemption from the payment of:
  - a. court fees, transcribing fees and other public fees fixed under federal legislation;
  - b. costs of official action outside the court;
  - c. fees of witnesses, experts, interpreters, translators and associate judges;
  - d. costs of necessary announcements;
  - e. costs of a trustee which the party would otherwise be bound to pay (under Article 10 of the Code of Civil Procedure);
  - f. the necessary cash outlay made by the legal representative appointed by the court or by the lawyer or representative assigned to the party; the costs, fees and expenses enumerated under items (b) to (e) and under the present item are temporarily settled from official funds;
2. exemption from furnishing a security for the cost of proceedings;
3. temporary gratuitous assignment of a lawyer where representation by a lawyer is required under the law or appears necessary in the light of the circumstances involved;
4. if, in a legal matter for which representation by a lawyer is not required under the law and the party is not assigned a lawyer, the suit is to be filed with a court outside the district court circuit of the party's habitual residence, the right to place on record with the district court of his habitual residence the suit, together with the application for legal aid and to demand that that record be forwarded to the trial judge and that the latter designate a court official or a trainee lawyer as the party's representative

to safeguard, free of charge, his rights in the hearing; choice of such a representative is the responsibility of the presiding judge (Article 64, para 1, Code of Civil Procedure).

In granting legal aid it must be decided which of the benefits enumerated in paragraph 1 are to be accorded and to what extent these will be granted. This implies that there is the institution of partial legal aid. The benefit provided under paragraph 1, sub-paragraph 3 (representation by a lawyer) may be granted only in full and exclusively in combination with full benefits under paragraph 1, sub-paragraph 1 (a) (temporary exemption from the payment of court fees, transcribing fees and other public fees fixed under federal legislation; Article 64, para 2, Code of Civil Procedure).

Refund of the outlay made by the person benefiting from legal aid, including travel and subsistence expenses when the court requires him to appear in person, is not provided except for proceedings before social insurance arbitration tribunals. The granting of legal aid cannot be made subject to payment of a contribution by the person concerned, though it is noted that the granting of partial legal aid is tantamount in effect.

#### BELGIUM

- a. Legal aid covers court costs, including court fees and taxes, bailiff's (huissier) costs and costs relating to witnesses and experts (Art. 664 of the Judicial Code).
- b. Yes. Under Article 1018, sub-paragraph 5, of the Judicial Code, such expenses include travel and subsistence costs of magistrates, clerks of the court and parties for journeys ordered by the judge, and the cost of legal acts directly relevant to the proceedings. This measure is not frequently applied however, as personal appearances are rare.
- c. Legal aid proper does not cover lawyers' costs, but where appropriate, the lawyer is nominated by the Advice and Protection Bureau, which in certain circumstances may determine the amounts due by the client, either as pre-payment, or as fees.
- d. Legal aid does not settle the problem of security (cautio judicatum solvi). It should be noted that this is only very rarely requested.
- e. The cost of newspaper announcements when these are prescribed by law or authorised by the courts.

In cases where the proceedings require the services of a solicitor, the latter's expenses are covered by legal aid and the solicitor must offer his services free without requesting fees (eg divorce proceedings; winding up of estates).

#### CYPRUS

All costs relating to the proceedings, such as costs relating to witnesses and experts, the personal costs of the legally aided person, costs of the lawyer and other costs are covered by legal aid subject to the discretion and approval of the trial judge.

DENMARK

A suit in forma pauperis involves exemption from fees, appointment of a lawyer, whose fee shall be paid by the Treasury, and compensation by the Treasury for any justly defrayed costs relating to witnesses, survey and valuation etc.

Legal aid does not, however, cover the applicant's own expenses in connection with his appearance and hence not his travel costs either.

FRANCE

- a. Yes.
- b. No.
- c. Yes.
- d. Payment of security "cautio judicatum solvi" no longer exists in French law.
- e. Exemption from payment of all costs and deposits.

FEDERAL REPUBLIC OF GERMANY

- a. A person who has been granted legal aid is entitled to temporary exemption from paying court costs of any kind, especially fees and expenses of witnesses, expert witnesses and bailiffs (Section 115, paras 1 and 3, of the ZPO).
- b. If the court orders the appearance of the indigent party, he will receive an advance of travel expenses or, if not, he shall be reimbursed for any costs advanced, ie. for travelling to the court and back as well as unavoidable subsistence expenses.
- c. If an attorney at law has been assigned to the indigent party, the latter is provisionally exempt from paying the attorney's fees and expenses (Section 115, para 1, sub-para 3 of the ZPO). Until an order for subsequent payment has been made (cf reply to Q 22) the attorney at law can assert his claims only against the Treasury (cf. reply to Q 20). The indigent party is not obliged to pay any remuneration to officials employed by the court who have been assigned to him (Section 116, para 2, first sentence of the ZPO). Any cash expenses that have been incurred by such official as the indigent party's agent in the proceedings are borne by the State and included in the costs account (Section 116, para 2, second sentence, of the ZPO).
- d. Legal aid includes the exemption from giving security for the costs of the litigation (Section 115, para.1, sub-para. 2 of the ZPO).
- e. Not applicable.

GREECE

- a. Yes.
- b. No.
- c. Yes.
- d. Security is not required.
- e. Solicitors' costs (Article 199, para 1, Code of Civil Procedure).

ICELAND

- a. Yes.
- b. No.
- c. Yes, both fee and expenses.
- d. No.
- e. He gets all copies, brought forward in case, free of charge.

ITALY

- a. Costs of proceedings.
- b. Personal expenses of the claimant are excluded.
- c. Legal representative's fees are included (Article 40 Decreto 3282/1923).

LUXEMBOURG

- a. Legal aid covers all court costs.
- b. Only court costs (not personal expenses).
- c. It does not cover the barrister's fees. The solicitor is entitled only to the emoluments paid him by the State, and to his expenses.
- d. No security (judicatum solvi) is required either of Luxembourg nationals or of nationals of other countries signatory to the Hague Convention of 1 March 1954 (Article 17). The law does not provide for dispensation from payment of other securities such as that required for the enforcement of an interim court order.
- e. No costs other than court costs (experts, witnesses, ushers' fees, court proceedings).

NETHERLANDS

- a. Court tax (there is no fee), bailiff's fees and costs. Not however costs relating to witnesses, experts or interpreters;
- b. The personal expenses of the legally aided person are not covered.
- c. Only the fee of the legal adviser; not his expenses; however, it is not customary for a lawyer to charge a legally aided client for normal office expenses;
- d. Not the (rare) payment of security;
- e. No other costs.

NORWAY

- a. Yes.
- b. Personal costs are only covered to a small extent. Travel expenses are only covered in special circumstances and compensation for loss of income from work due to personal appearance before the court are not covered.
- c. Yes.
- d. If the term "payment of security" means surety for possible liability to pay the legal costs incurred by the contesting party, the answer is no.



- e. No. Legal costs which the legally aided person may be ordered to pay to the contesting party are not covered.

#### PORTUGAL

- a. Legal aid consists in temporary exemption from all or part of the legal costs owing to the State (court dues, stamp duty, etc); incidental expenditure such as publication of announcements, travel costs of the parties, etc, is not included in such exemption; lawyer's fees are less than normal. Costs, if any, relative to law officers, experts and other witnesses (travel or other allowances) are borne by the State.
- b. Legal aid does not cover the travel and subsistence costs of the parties.
- c. The patrono officioso is always entitled to payment; the amount is fixed by the judge and, generally speaking, is substantially lower than the fees of a barrister representing a private client. If counsel is the agent of the Public Prosecutor's Department, the remuneration is paid to the welfare department of the Ministry of Justice.
- d. Portuguese law does not recognise the payment of security (cautio judicatum solvi). (However, parties who have not been granted legal aid, or who have been granted it only in part, are obliged to pay preparos, which are advances on sums proportionate to the court dues or intended to meet expenses arising concurrently with the proceedings).
- e. The costs covered by legal aid are indicated in the foregoing paragraphs.

#### SWEDEN

- a. All court costs are covered.
- b. Personal costs of the aided person for appearing before the court.
- c. Fees and expenses of counsel are covered.
- d. Payment of security is covered when security is required.
- e. Costs of investigation before the proceedings, costs of translations, public notices.

#### SWITZERLAND

All the costs mentioned under (a), (c) and (d).

#### TURKEY

- a. There is temporary exemption from court costs.
  - b. The State pays in advance the costs of witnesses and experts.
  - c. A lawyer is engaged subject to payment of his fees after the case.
  - d. Exemption is granted from the payment of security (cautio judicatum solvi).
  - e. The cost of notifications is left in abeyance.
- ./.

- f. The fees chargeable for enforcement are left in abeyance.
- g. There is temporary exemption from stamp duty and the charges on notarial documents.

#### UNITED KINGDOM

- a. All these would be covered insofar as they are applicable to United Kingdom proceedings.
- b. All these would be covered.
- c. All these would be covered.
- d. This is not covered; if an assisted person is ordered to give security for costs he must find the security personally - but it is comparatively rare for the court to order an assisted person to give security.
- e. Generally speaking, all costs reasonably incurred are payable out of the legal aid fund (taxation of the cost is, in general, mandatory). The assisted person's solicitor must, however, obtain authority from the Area Committee before certain acts are done or steps are taken, such as adding parties to the proceedings. Failure to obtain authority in such cases will result in the costs being disallowed on the legal aid taxation. Prior authority may be obtained for certain other acts, for example taking unusual or expensive steps such as bringing in a witness from abroad. If authority is not obtained in these cases the costs may be disallowed on the taxation.

#### CANADA

- a. Court costs, including clerk's fees and costs relating to witnesses and experts are generally covered by all provincial legal aid plans.
- b. The personal costs of the legally aided person are generally not included.
- c. The fees and expenses of lawyers providing legal aid (including their disbursements) are covered by Canadian legal aid plans. In the case of members of the private bar these fees are in accordance with established tariffs.
- d. Payment of security and other costs may be covered, but this would only be in the discretion of the officials administering the legal aid plan.
- e. No other costs are covered by Canadian legal aid plans.

#### FINLAND

- a. Yes.
- b. Yes, when the court requires the aided person to appear in person.
- c. Yes.
- d. Cautio judicatum solvi is unknown in the Finnish legal system.
- e. -

Question No. 10

May the granting of legal aid be subject to payment of a contribution by the legally aided person? In what circumstances?

Replies

AUSTRIA

See reply to Q 9.

BELGIUM

Yes. Article 669 of the Judicial Code provides that legal aid granted to an applicant may, depending on the extent of the latter's income, be subject to payment of a contribution to the Registrar, the amount being determined by the granting authority.

As regards the appointment of a lawyer, see reply to Q 9 (c).

CYPRUS

Generally the granting of legal aid is not subject to payment of a contribution by the legally aided person. However, the judge dealing with the case may order to be paid to the lawyer assigned to the legally aided person out of any money recovered by him or may charge in favour of the lawyer assigned upon any property recovered by the legally aided person, such sum, not exceeding one fourth of the amount or value recovered, as may seem fit.

DENMARK

Legal aid cannot be made subject to payment of a contribution by the legally aided person but it may be restricted to covering only a few of the benefits ordinarily tied to legal aid. Such restriction is rare, however.

FRANCE

Yes: partial legal aid (cf reply to Q.5a).

FEDERAL REPUBLIC OF GERMANY

If the indigent party is able to pay part of the costs of the litigation without endangering his or his family's maintenance, it shall be ordered that, with respect to this part, there shall be no temporary exemption from the court fees and the attorney's fees and expenses; instead, the court may also rule that no exemption shall be granted for certain types of fees or part thereof. (Section 115, para 2, first sentence, of the ZPO.) Moreover, the court may avail itself of the following possibility: It may grant the indigent party unlimited legal aid and at the same time order that the court fees and attorney's fees be paid subsequently by reasonable instalments.

GREECE

Yes (Article 199, para 2, Code of Civil Procedure).

ICELAND

No.

ITALY

No.

LUXEMBOURG

As the Act, which is a law of derogation, is silent on this point, the answer must be no.

NETHERLANDS

Yes, to a maximum of f. 100 (in practice), depending only on the means of the legally aided person. /See also Appendix III (Table III) to this document./

NORWAY

The legally aided person does not normally pay anything for legal aid.

PORTUGAL

Legal aid may be granted in toto in which case there is no reason to demand any contribution; it may be partial, in which case the person receiving the aid is obliged to pay what he can, in other words to pay a proportion of the preparos (cf -Q. 9 (d)).

SWEDEN

Yes, in principle a contribution from the applicant is required in all legal aid matters. This contribution can, however, in certain cases be reduced or remitted. For more details see Mr Hellners' report p 5-6 (Appendix VI to this document, pp. 199-200). As the basic amount mentioned there has been raised to S.Cr.10,400, consequently the contribution for 1977 is somewhat higher.

SWITZERLAND

As a general rule, no. Only one canton provides that the legally aided party may be required to pay monthly contributions.

TURKEY

No.

### UNITED KINGDOM

For persons with small incomes legal aid is free; for others the scheme is a contributory one. If a person's disposable income does not exceed £665 and his disposable capital is not more than £300 he is entitled to receive legal aid without contributing towards the costs. If his resources exceed these figures he will be liable to pay a contribution from income not greater than one third of the amount by which his disposable income is in excess of £665 a year, and/or a contribution from capital not greater than the amount by which his disposable capital exceeds £300. The amount of the maximum contribution he can be called on to pay is determined by the Supplementary Benefit Commission; the actual amount which he will have to pay is assessed by the committee which considers his application for legal aid. This must not exceed the maximum contribution determined by the Commission and will be fixed at the estimated amount of his solicitor's and counsel's costs. If the committee's estimate later proves to be incorrect the actual contribution will either be increased or reduced accordingly. In addition any money or other property recovered or preserved by the assisted person in the proceedings will normally be applied to make good any deficiency in the legal aid fund: see the reply to Q 22 below.

### CANADA

The granting of legal aid may be subject to a payment of a contribution by the legally aided person in most jurisdictions in circumstances where it is determined by the authority determining financial eligibility for legal aid that the applicant is financially capable of paying such contribution. The degree of success in recovering the required contribution has varied considerably from province to province and most jurisdictions have had little success in this regard.

Where a sum of money or item or property is recovered with the assistance of legal aid, the various provincial plans provided that the cost of legal aid shall be a charge against the sum of money or property recovered.

### FINLAND

If the court is of the opinion that a person applying for legal aid is able to pay a part of the costs, the court shall when granting legal aid decide so and lay down the maximum amount of his contribution.

Question No. 11

Is there any other provision in your country for granting of partial legal aid (eg for only part of the costs of the proceedings)? If so, give details.

Replies

AUSTRIA

See reply to Q 9.

BELGIUM

No. The contribution just referred to is subsequently taken as constituting part-payment of the legal costs. Regarding the lawyer, see reply to Q 9 (c).

CYPRUS

There is no other provision in Cyprus for granting of partial legal aid.

DENMARK

See reply to Q 10.

FRANCE

No.

FEDERAL REPUBLIC OF GERMANY

No. However, in those cases where the court's taking action depends on the advance payment of the fees falling due upon the institution of proceedings and the advance payment of service costs, the plaintiff may be exempted from the duty of making the advance payment if immediate payment would cause him difficulties in view of his financial circumstances or for other reasons and if the intended prosecution does not appear to be futile or frivolous (Section 65, para. 7, of the Court Fees Act).

GREECE

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ICELAND

See reply to Question 5 (b) in fine. In other cases partial legal aid cannot be granted.

ITALY

No.

LUXEMBOURG

No other provisions.

NETHERLANDS

Yes. Persons with means which are only slightly over the maximum required for legal aid may qualify for "reduced rate", implying that they pay only half the lawyer's normal fee and half the court costs. This arrangement is made only in a relatively small number of cases.

NORWAY

Partial legal aid is granted in the form of an exemption from paying court fees which thus covers the same amount as legal aid with the exception of lawyer's costs. In the case of some court proceedings it has been laid down by Statute that the parties shall not cover court fees and costs (Act of 18 December 1959 No. 11, Article 19).

PORTUGAL

Aid is provided in toto when the applicant's means are totally inadequate to meet the cost of the trial. Aid is provided in part when the applicant's means enable him to pay part of the cost of the proceedings.

In order to establish whether full or partial legal aid should be granted the judge considers the applicant's income, his responsibilities, the cost of living and the probable cost of the trial.

SWEDEN

No.

SWITZERLAND

Legal aid may be limited to court costs or to certain categories of court costs (court fees, expenses such as witnesses' allowances or experts' fees), if the party is able to pay the other expenses. (This situation should be distinguished from the case where a lawyer is not appointed, independently of the party's financial position, because the latter is entitled to act in person.)

TURKEY

No.

UNITED KINGDOM

Legal aid may be granted in respect of either the whole or of part of the proceedings in question. The matters covered by the legal aid certificate depend on its terms. If legal aid is not granted for the whole of the proceedings it may be qualified in one of four ways: by restricting the proceedings which the certificate is to cover, by stipulating that proceedings may be taken only in a superior court, by imposing a certain condition, or by limiting the steps which may be taken in the proceedings. A limitation will

usually be imposed when it appears that the applicant has a proper case, but there remains doubt which should be clarified before taking the matter forward. The certificate may, for example, be limited to cover only the steps up to close of pleadings, or to obtaining counsel's opinion as to the merits of the case. Limitations are normally imposed when the certificate is issued.

#### CANADA

Other than the provisions mentioned in response to Q 10, there are no provisions providing for the granting of partial legal aid. Sometimes a solicitor's authority may be limited to a particular stage of civil proceedings, after which the applicant's entitlement to legal aid may be reviewed in the light of what is then known about the merits of the case.

#### FINLAND

No.



Question No. 12

Is the other party or any public authority heard before a decision granting legal aid is taken?

Replies

AUSTRIA

Generally neither the other party nor any public authority is heard before a decision granting legal aid is taken. But if the court deems necessary a hearing to discuss facts which it deems relevant, it may conduct such a hearing.

BELGIUM

Not as far as the nomination of the lawyer by the Advice and Protection Bureau is concerned.

Yes, when legal aid is granted by the Legal Aid Office.

CYPRUS

The other party or any public authority are not heard before a decision granting legal aid is taken.

DENMARK

No, not necessarily.

FRANCE

This is possible but not compulsory.

FEDERAL REPUBLIC OF GERMANY

As a matter of principle, the opponent must be heard before legal aid is granted (Section 118 (a), para 1, second sentence of the ZPO). Exceptions from this rule are admissible if, for special reasons, such hearing is inexpedient (Section 118, para 1, second sentence of the ZPO), as, for instance, in the field of execution. As concerns the certificate of indigence that must be submitted, cf reply to Q 5 (a).

GREECE

Yes, the other party is heard if the competent court considers this to be expedient (Article 197, Code of Civil Procedure).

ICELAND

The tax assessing authority gives a certificate, but the other party is seldom heard.

ITALY

Yes. (Article 20 Decreto 3282/1923), (see reply to Q 6.)

LUXEMBOURG

The judge to whom the application is made rules on it directly, after hearing the applicant and the other party, if necessary, and the Public Attorney.

NETHERLANDS

The applicant has to submit a statement furnished by the municipality concerning his financial means. Often this statement is drawn up solely on the basis of information supplied by the applicant. The municipality and those granting legal aid may ask for information from the tax authorities. The Legal Aid Board may hear the other party, but seldom does. The court gives the other party the opportunity to be heard before confirming the decision to grant legal aid.

NORWAY

The opposing party is entitled to state his opinion on an application for legal aid. The opinion of public authorities may be called for if necessary.

PORTUGAL

The other party is heard on the application for legal aid. If the trial has reached a stage where that party may not intervene, the end of that stage must be reached before he can be heard on the application.

SWEDEN

No.

SWITZERLAND

As a general rule, the opposing party is heard.

TURKEY

As a general rule the court grants legal aid without hearing the other party or any public authority. But it may hear the other party if it sees fit.

UNITED KINGDOM

Not in England and Wales. The opponent or any other party is, however, entitled (if he is aware that an application for legal aid has been made) to give information to a legal aid committee with a view to preventing the applicant from receiving legal aid. In Scotland the other party concerned is notified of the legal aid application and may make written objections. If the Legal Aid Committee consider it desirable they will permit a personal appearance by the other party or his solicitor.

CANADA

Neither the other party nor any public authority is heard before a decision granting legal aid is taken, although the other party is entitled to make representations to the granting authority if he becomes aware of the application - as in England.

FINLAND

No.

Question No. 13

Must legal aid be granted separately for each stage of the proceedings?

Replies

AUSTRIA

The exemptions and rights under legal aid are valid until the respective proceeding is definitely closed and in addition they are applicable to an execution proceeding instituted not later than within a year from the close of the lawsuit. There is consequently no rule requiring legal aid to be granted separately for each stage of the proceedings.

BELGIUM

Legal aid is granted for each stage of the proceedings (first instance, appeal, cassation). It is granted only for required procedural instruments and for copies or extracts of deeds to be produced for the judge in charge or designated to deal with the dispute including intimation of the final judgement.

CYPRUS

Legal aid is not granted separately for each stage of the proceedings. However, there shall be no appeal by a person admitted to sue or defend as a pauper without the leave of the trial judge or the appellate court.

DENMARK

A person who has been granted legal aid in the Court of First Instance and wins his case shall automatically enjoy legal aid in the Court of Appeals in the event his opponent appeals the case. Otherwise a new grant of legal aid must be obtained for the appeal.

FRANCE

Legal aid is granted for the whole of the proceedings before each level of jurisdiction and for enforcement of the decision.

FEDERAL REPUBLIC OF GERMANY

Legal aid is granted separately for the Courts of First Instance, Appeal and Review; for the Court of First Instance, including execution (Section 119, para 1 of the ZPO).

GREECE

No (Article 198, Code of Civil Procedure).

ICELAND

Yes.

ITALY

No; once it has been granted, it applies to all degrees and phases of the judicial proceedings (Article 12 Decreto 3282/1923) with the exception of the limitations mentioned in Article 13).

LUXEMBOURG

If the recipient of legal aid wins his case in the lower court, he is also granted legal aid for any appeal and cassation proceedings. If he loses and wishes to appeal, he must reapply.

NETHERLANDS

Yes, except that no new decision concerning legal aid is required from the court if an appeal is brought by the other party.

NORWAY

Legal aid only applies to proceedings before the court explicitly mentioned in the legal aid permit. A separate application for legal aid must be made in the case of proceedings before a Court of Appeal.

PORTUGAL

Legal aid is granted for all subsequent stages of the proceedings (appeal, cassation), and even for enforcement. If legal aid has been granted during proceedings preliminary to the main trial, it applies also to the latter.

SWEDEN

No, a decision of granting legal aid covers all stages of the proceedings, including appeal. Execution of a judgement, however, is excluded from legal aid granted for the proceedings.

SWITZERLAND

In certain cantons, legal aid is granted separately in each court, in others for the entire cantonal procedure. Before the Federal Court a new application must be made for each case. See under Q 22.

TURKEY

No.

UNITED KINGDOM

No. But no legal aid certificate may relate to proceedings, other than interlocutory appeals, both in a Court of First Instance and in an Appellate Court, or to proceedings in more than one Appellate Court.

CANADA

Generally speaking, legal aid must be granted separately for each stage of the appeal and the matter is subject to closer scrutiny as it progresses to higher levels of the court process. Legal aid is generally granted for an entire proceeding unless the merits of the case are to be reviewed at a later stage as indicated in the response to question 11.

FINLAND

No. When legal aid has been granted the decision is valid at all stages of the proceedings unless it is separately revoked.

Question No. 14

- a. By whom is the lawyer assisting the legally aided person chosen?
- b. Is it by the same authority or body which grants legal aid?

Replies

AUSTRIA

When the court decides to assign a lawyer it has so to inform the committee of the Bar Council competent by the seat of the trial judge in order that the committee appoint a lawyer as the party's representative (Article 67, Code of Civil Procedure).

The respective rules in Section VI of the Lawyers' Statute/ Reshtsanwaltsordnung, as amended by the Federal Act of 8 November 1973, Fed Law Gaz No. 570, read as follows: "Appointment of lawyers especially for the purpose of legal aid:

Article 45: If the court decides to assign a lawyer and if the granting of legal aid implies such an assignment, the party shall have the right to a lawyer to be appointed by the Bar Council.

Appointment for a proceeding before the Constitutional Court or the Administrative Court shall rest with the committee of the Bar Council competent by the habitual residence of the party, else with that of the Bar Council competent by the seat of the court.

If the lawyer so appointed would have to act outside the circuit of the Court of the First Instance where his office is seated or if for the party staying outside that circuit it would be unreasonable, because of insurmountable obstacles or high expenses, to travel to the appointed lawyer for necessary personal consultation, the committee of the Bar Council competent by the place of the activity to be performed or the party's abode respectively, if so requested by the appointed lawyer or the party, shall appoint for that purpose a lawyer having the seat of his office within the circuit of the Court of the First Instance where that place is situated.

The committee of the Bar Council shall notify any such appointment, in the cases provided in paragraph 2, to the court from which it received the information; in the cases under paragraph 3, to the Court of the First Instance where the proceeding is conducted; or if the appointed lawyer has to act before another court, to that other court.

Article 46: In making such appointment, the committees of the Bar Councils shall proceed according to firm rules which shall ensure the greatest possible equality in the distribution of appointments of, and burdens on, the lawyers belonging to the respective Bar Councils, having particular regard to the local circumstances. These rules shall be laid down in the committees' Rules of Procedure.

The Rules of Procedure may, however, stipulate general criteria according to which lawyers will, for important reasons, be generally or partly exempted from an appointment. Important reasons shall be deemed in particular activities serving the interests of the Bar or personal circumstances in the light of which an appointment would involve special hardship".

It results from the foregoing that legal aid consisting in counselling a person is generally provided by lawyers in private practice and in exceptional cases by court officials or trainee lawyers (cf the replies to Q 9, 10 and 11).

Choice of such other representatives is the responsibility of the presiding judge. Apart from the exceptions mentioned above, every lawyer is under the obligation to act as "counsel under the legal aid scheme".

#### BELGIUM

- a. The lawyer assisting the legally aided person is appointed by an advice and protection bureau set up by the Bar Council.
- b. No, legal aid is granted by a legal aid bureau.

#### CYPRUS

The lawyer assisting the legally aided person is always chosen by the judge who is the same authority that grants legal aid.

#### DENMARK

- a. The lawyer is appointed by the court where the case will be heard.
- b. No; see reply to Q 4.

#### FRANCE

- a. The President of the Bar (Batonnier de l'Ordre d'Avocats"), or his deputy, to whom is sent a copy of the decision of eligibility, rendered by the legal aid bureau.
- b. No, legal aid is granted by the legal aid bureau.

#### FEDERAL REPUBLIC OF GERMANY

- a. The attorney at law is assigned by the court that grants or has granted
- and b. legal aid.

#### GREECE

- a. By the competent authority granting legal aid (Article 200, Code of Civil Procedure).
- b. Yes.

#### ICELAND

- a. and b. The assisting lawyer is usually chosen by the person himself, but he is appointed by the Minister of Justice, the authority that grants legal aid.



ITALY

- a. The counsel appointed by the court is designated by the same Commission for Legal Aid.
- b. Yes.

LUXEMBOURG

- a. and b. Counsel is appointed by the judge granting legal aid.

NETHERLANDS

See reply to Q 4.

NORWAY

- a. For practice, the legally aided person chooses his own lawyer himself, but the lawyer is formally appointed by the Court or the country Governor respectively. If a lawyer is chosen from outside the judicial district, the legally aided person must normally cover the extra costs involved.
- b. The lawyer chosen by the legally aided person is then formally appointed by the court.

PORTUGAL

- a. and b. The judge appoints counsel to assist the legally aided person. However, the latter may appear with a lawyer of his own choosing, having power of attorney, and apply for legal aid only for the trial costs, or request aid for costs and lawyer's fees indicating which lawyer he would like to have, on condition that the lawyer in question agrees to take the case.

SWEDEN

- a. The lawyer is appointed by the Legal Aid Board.
- b. Yes.

SWITZERLAND

- a. The same authority as grants legal aid. The practice is different
- and b. in only two cantons: the cantonal court (instead of the legal aid office) and the presiding judge of the Appeal Court (the same applies where legal aid has been granted by the Regional Court).

TURKEY

- a. By the Bar.
- b. No.

UNITED KINGDOM

The legally aided person himself chooses the solicitor he wishes to act for him. It is for the legally aided person's solicitor to decide whether the proper conduct of proceedings requires counsel; if he does, the legally aided person is entitled to choose counsel himself, though he will normally accept his solicitor's advice.

CANADA

- a. Generally the lawyer assisting the legally aided person is chosen by the legally aided person himself from a panel of solicitors who have agreed to provide services to legally aided clients. In most jurisdictions with legal services clinics utilising salaried lawyers this freedom of choice is usually preserved for those wishing it, who have the option to choosing a lawyer from the general panel if they so wish.
- b. In almost all cases the person seeking legal aid either chooses his own lawyer or his case is handled by the first lawyer in the legal aid clinic with whom he comes in contact.

FINLAND

By the court. If the person granted legal aid has himself suggested a lawyer meeting the requirements, that lawyer shall be appointed unless it causes considerable extra costs or specific reasons demand otherwise. If a person has been granted legal advice by a communal legal advisor and his case is brought before a court of law, the legal advisor is normally appointed counsel for the party.

Question No. 15

Is legal aid provided:

- a. by lawyers (or trainee lawyers) in private practice?
- b. by full-time (or part-time) salaried lawyers at public or private legal aid offices?
- c. by other persons? or
- d. a combination of these possibilities?

Replies

AUSTRIA

See reply to Q 14.

BELGIUM

- a. Lawyers and trainee lawyers having a private practice provide aid to persons with inadequate income.
- b.
- c. Not applicable.
- d.

CYPRUS

Not applicable.

DENMARK

Legal aid is provided by lawyers in private practice.

FRANCE

- a. Yes.
- b. No.
- c. No.
- d. No.

FEDERAL REPUBLIC OF GERMANY

- a. In proceedings in which the parties have to be represented before the court by an attorney at law admitted to practice before that court, the party who has been granted legal aid is entitled to having assigned to him an attorney admitted to practice before the court who will protect the party's rights and provisionally act free of charge (Section 115, para 1, sub-para 3, of the ZPO).

In the other proceedings the court, upon the application of a party who has been granted legal aid, shall assign to such party an attorney at law if representation by an attorney at law seems to be required (Section 116, para 1, of the ZPO). In these proceedings the assignment of an attorney at law depends on the circumstances of the individual case, particularly, on the difficulty of the factual and the legal position and the personal circumstances of the indigent party. In the legal system of the Federal Republic of Germany the attorney at law is an independent organ of the administration of justice and exercises a free profession (Section 1 and 2 of the Federal Statute on Attorneys at Law).

- b. Not applicable.
- c. If an attorney at law is not assigned to an indigent party in cases in which representation by an attorney at law is not mandatory, a person with legal training who has passed the first of the two examinations for the legal profession (Referendar) or other official employed by the court may, on the party's application, be assigned to protect his interests free of charge (Section 116, para 2, of the ZPO).

In proceedings before the Finance Courts an attorney at law or a tax adviser may be assigned to the indigent party (Section 142, para 1, second sentence of the Statute on Finance Courts).

In patent disputes a patent agent may be assigned instead of an attorney at law - in certain cases, to assist the attorney at law (Section 46 (e), para 1, of the Patent Act, Section 1 of the Act on the Assignment of Patent Agents in Legal Aid Cases).

- d. Not applicable.

#### GREECE

- a. Yes, by lawyers having private clients.
- b. No.
- c. Yes: solicitors, bailiffs (Article 200, Code of Civil Procedure).
- d. Yes.

#### ICELAND

- a. By lawyers in private practice.
- b., c. No.
- and d.

#### ITALY

- a. Counsel is chosen among professional barristers and solicitors, who are regular members of the Bar and of the roll of solicitors.
- b., c. No.
- and d.

LUXEMBOURG

- a. Usually by a trainee barrister, assisted by a solicitor where required by law.
- b. No, non-existent in Luxembourg.
- c. No.
- d. No.

NETHERLANDS

A combination of (a) and (c) (bailiffs only in the lowest court).

NORWAY

- a. Yes
- b. Yes  
(Such public legal aid offices are only found in Oslo and the county of Akershus.)
- c. No.
- d. -

PORTUGAL

a., b., c. & d.

Legal aid is usually provided by lawyers in private practice. If the court to which the judge is attached has no lawyers to represent the litigant, the latter may be assisted by a trainee lawyer, by a member of the Public Prosecutor's Department or by a law officer.

SWEDEN

Both by lawyers in private practice and by full-time salaried lawyers at public law offices. It is possible but not usual that also other persons, eg a trade union secretary, provide legal aid.

SWITZERLAND

- a. Only by lawyers in private practice (not trainee lawyers).
- b., c. -
- and d.

TURKEY

Legal aid is provided by part-time salaried lawyers.

UNITED KINGDOM

Legal aid is normally provided by lawyers in private practice. There are also a number of salaried lawyers working in independent law centres who undertake legal aid work.

#### CANADA

Legal aid in Canada is provided by both lawyers in private practice and full-time salaried lawyers at public legal aid offices. In those jurisdictions where the legal aid plans utilise full-time salaried lawyers this is almost always in combination with some use of lawyers in private practice. The particular combination in use in a particular province may be determined by reference to "The Delivery of Legal Aid Services in Canada".

#### FINLAND

The system is a combination of (a), (b) and (c). Legal aid is usually provided by lawyers in private practice. The person appointed counsel must be an attorney or other person capable of handling the matter in a competent manner (not necessarily a lawyer). If a person has been granted legal advice by a communal legal advisor and his case is brought before a court of law, the legal advisor is normally appointed counsel for the party.

Question No. 16

- a. Are all lawyers obliged to participate in the legal aid scheme or do individual lawyers participate on a voluntary basis?
- b. If on a voluntary basis (ie on a panel), what proportion of the lawyers participate?

Replies

AUSTRIA

See reply to Q 14.

BELGIUM

- a. All lawyers are obliged to participate in the legal aid scheme. In practice, trainee lawyers are mainly chosen.
- b. -

CYPRUS

- a. There is no legal aid scheme in Cyprus.
- b. Not applicable.

DENMARK

- a. and b. Lawyers are under no obligation to accept appointments to render legal aid. Lawyers are usually chosen from among those hired by the Ministry of Justice to handle suits in forma pauperis (in addition to cases of their own). However, any lawyer may accept an appointment in an individual case even though he does not belong to the permanent group of government-appointed lawyers.

FRANCE

- a. All lawyers must participate in the legal aid scheme.
- b. -

FEDERAL REPUBLIC OF GERMANY

- a. Every attorney at law who has been assigned to an indigent party through grant of legal aid must take on the representation of this party in judicial proceedings (Section 48, para 1, sub-para 1 of the Federal Statute on Attorneys at Law). The attorney at law may apply for the revocation of the appointment if there are important reasons (Section 48, para 2 of the Federal Statute on Attorneys at Law). Often, the attorney at law is chosen from a list, kept by the court, of attorneys at law who are prepared to serve as legal aid counsel.
- b. There are no figures available.

GREECE

- a. All lawyers.
- b. -

ICELAND

- a. All lawyers are obliged to participate in the legal aid scheme.
- b. Does not apply.

ITALY

- a. All counsels and solicitors are bound to undertake the defence of an indigent person, if they are appointed by the Legal Aid Commission (Article 1 Decreto 3282/1923)
- b. No.

LUXEMBOURG

- a. All barristers registered at the Bar are required to participate in the legal aid scheme.
- b. Not applicable.

NETHERLANDS

- a. Lawyers are in principle obliged to participate, but where enough lawyers are available, those who have served a term of three years or more are allowed to opt out, wholly or in part.
- b. More than two thirds of the lawyers participate.

NORWAY

- a. The lawyer decides for himself in each case whether to act as counsel in a legal aid case.
- b. Lawyers who participate in legal aid cases are not registered specially. However, most lawyers practising at the Bar volunteer from time to time to participate in legal aid cases.

PORTUGAL

All lawyers are obliged to participate in the legal aid scheme, with the exception of certain ranks of barristers (present and former presidents of the Bar, etc) who are granted exemptions. Such exemptions are few. However, a lawyer appointed to assist a person on trial may be exempted if he can give the judge convincing ethical or other reasonable grounds.

The Bar draws up and distributes to the judges lists of lawyers whom they may appoint.



SWEDEN

- a. Lawyers in public law offices are obliged to participate. Private practice lawyers participate on a voluntary basis.
- b. The majority of lawyers in private practice participate. (No statistics are available.)

SWITZERLAND

- a. All lawyers practising before the Court and resident in the canton are obliged to participate.
- b. -

TURKEY

All lawyers are obliged to participate.

UNITED KINGDOM

Not all lawyers are obliged to participate. Panels of solicitors and barristers willing to act for legally aided persons are maintained by the Law Societies. Approximately 58% of lawyers participate.

CANADA

- a. Lawyers participate in the various Canadian provincial legal aid schemes on a voluntary basis.
- b. Statistics on the participation of lawyers on the various panels are not, at this time, available although these might possibly be obtained from the directors of the various provincial legal aid plans.

FINLAND

- a. The lawyers participate as a rule on a voluntary basis. Without his or her consent, however, an attorney, who normally carries out the tasks of an attorney in the court in question, may be ordered to act as counsel.
- b. Information is not available. The majority of lawyers in private practice participate,

Question No. 17

- a. Does the legally aided person have the right to choose his own lawyer?
- b. Where lawyers participate on a voluntary basis, may the legally aided person choose a lawyer who is not on a panel?
- c. Is the lawyer who is chosen by the legally aided person or nominated free to refuse his services, and, if so, on what grounds?

Replies

AUSTRIA

The legally aided person has no right to choose his own lawyer. But a party may take legal steps through a lawyer of his own choice and apply for legal aid to be granted in respect of the other facilities (Article 64, para 1, Code of Civil Procedure).

A lawyer appointed to represent a legally aided person must not refuse his services but he may file an application to terminate or withdraw the decision granting legal aid (Article 68, Code of Civil Procedure). If these applications are granted he is relieved of his obligation to serve as a counsel.

BELGIUM

- a., b. When sponsored by the Advice and Protection Bureau, the applicant has not the right to choose his lawyer. Any individual may however select his own lawyer and ask him to lodge an application for legal aid.

The lawyer chosen in this way does not offer his services as part of a compulsory aid scheme. The client is on exactly the same footing as any other private client.

- c. A privately chosen lawyer may refuse his services. A lawyer who is nominated cannot refuse his services.

CYPRUS

- a. The lawyer is appointed by the judge who deals with the application for legal aid. The legally aided person has no right to choose his own lawyer.
- b. Not applicable.
- c. The lawyer who is nominated by the judge cannot refuse to act for the legally aided person or be discharged by him except with the leave of the judge on good cause shown.

DENMARK

- a. Yes, provided the lawyer is authorised to plead before the court in question.
- b. See Q 16.

FRANCE

- a. Yes, if the lawyer accepts and this is ratified by the "Bâtonnier".
- b. -
- c. Yes.

FEDERAL REPUBLIC OF GERMANY

- a. & b. In cases of courts composed of several judges the attorney at law is selected by the presiding judge from the number of attorneys at law admitted to practice before the court (Section 116 (b), para 1, first sentence of the ZPO). In the other cases the judge, if possible, assigns an attorney at law admitted to practice before the court (Section 116 (b), para 1, second sentence of the ZPO). The indigent party has no claim of right to have a certain attorney at law assigned to him, but his wishes are, if possible, considered. If the indigent party indicates a preference for a particular attorney at law or if this attorney at law submits the petition for legal aid, the presiding judge will as a rule assign this attorney at law.

The person who has been granted legal aid cannot be compelled to accept an attorney at law in whom he has no confidence or who is objectionable on other grounds.

- c. The assigned attorney at law must in principle take on the representation of the indigent party in the judicial proceedings. However, the attorney at law may apply for the revocation of the appointment for important reasons (Section 48, para 2 of the Federal Statute on Attorneys at Law). Important reasons may lie, in particular, if the attorney at law is prohibited by operation of law (Section 45 of the Federal Statute on Attorneys at Law) from acting in the proceedings concerned (eg on account of collision of interests, or former engagement in the same legal dispute as a judge or public prosecutor), if he is overburdened with work, or sick or old, if his power of attorney is withdrawn or if he loses the indigent party's confidence. The attorney at law is entitled to file an objection against the order of appointment as well as the refusal of the application to revoke the appointment (Section 116 (b), para 3 of the ZPO).

GREECE

- a. The lawyer is chosen by the competent court (Article 200, Code of Civil Procedure).
- b. & c. -

ICELAND

- a. As a rule, yes.
- b. Does not apply.
- c. He is not free to refuse his services.

ITALY

- a. No.
- b. No.
- c. The defence of needy persons is compulsory; only owing to serious reasons, the appointed counsel may ask to be relieved from his duty (Article 32 Decreto 3282/1923).

LUXEMBOURG

- a., b., c. The barrister is normally appointed by the judge hearing the case. The recipient of legal aid is entitled to choose his own counsel, but the barrister of his choice, not then being appointed by the court, is not obliged to accept.

Officially appointed barristers can in some cases refuse on giving the judge valid reasons (eg conflicting interest).

NETHERLANDS

- a. Yes, provided the lawyer concerned agrees. However, the Legal Aid Board can refuse if it considers the choice not in keeping with an equitable distribution of legal aid cases. Some boards never refuse.
- b. Only with the consent of the chosen lawyer.
- c. A designated lawyer or bailiff may only refuse his services if he is relieved of his obligation by the Legal Aid Board. Possible grounds for this are that the demands made by the legally aided person are unreasonable.

NORWAY

- a. The legally aided person himself chooses his own lawyer, cf Q 14.
- b. As stated under Q 16, there is no registered panel of lawyers who participate in legal aid cases. It is up to the legally aided person himself to choose a lawyer willing to act as his counsel under the rules on legal aid.
- c. As is apparent from the foregoing replies, the lawyer may refuse his services on the same grounds as he may refuse his services in respect of a paying client.

PORTUGAL

- a., b., c. The legally aided person is free to choose his lawyer but he must obtain the prior agreement of the lawyer to his appointment. (In the case of the lawyer's refusal, see reply to the previous question.)

SWEDEN

- a. In practice, yes. (See Mr Hellners' report p 8 - Appendix VI to this document, p. 201).
- b. There is no panel.
- c. As far as the legal aid scheme is concerned a lawyer in private practice is free to refuse his services on any ground. But it will probably not be in accordance with legal ethics to refuse without acceptable reasons.

SWITZERLAND

- a. Free choice of one's lawyer is not expressly provided for. In practice, however, the lawyer freely chosen by the party presents the application for legal aid and is then appointed by the authority, provided he practises in the canton concerned.  
  
One canton gives the party the right to reject the lawyer appointed by the authority.
- b. -
- c. The lawyer is obliged to accept the case; a few cantons mention the lawyer's right to refuse the case for serious reasons. One canton lists the cases: in particular that of a lawyer over 60. The grounds for refusal accepted in practice may be related to the etiquette of the bar (eg the rule against representing persons with opposing interests).

TURKEY

The legally aided person has not the right to choose his own lawyer.

UNITED KINGDOM

- a. Yes: see the answer to Q 14 above.
- b. No.
- c. Solicitors and barristers whose names have been entered on a panel become liable to undertake legal aid work of the type they have indicated they are willing to do. They have the right, however, to refuse to do so (for example, if they would be faced with a conflict of interests or if they had already advised another party to the proceedings).

CANADA

- a. In almost all instances the legally aided person has the right to choose his own lawyer if he so wishes. If he does not express a strong preference to any one lawyer the usual practice is for a lawyer to be assigned to him from a panel on a rotational basis or for a full-time salaried lawyer to be assigned to him on a similar appropriate basis.

- b. Usually the legally aided person may not choose a lawyer who has been elected to have his name included on the relevant panel. If the individual lawyer, however, is a member in good standing of the relevant bar society and wishes to take a particular client's case, he would have no difficulty in becoming a member of the relevant panel.
- c. The lawyer chosen by a legally aided person is free to refuse to handle the matter at his discretion.

FINLAND

- a. Yes; see reply to Q 14.
- b. See reply to Q 14.
- c. Yes, the lawyer is not obliged to give reasons for his refusal; see, however, the reply to Q 16 (a).

Question No. 18

- a. If the legally aided person has the right to choose his own lawyer, does this tend to concentrate legal aid work in a small number of lawyers? b. If so, what are the main factors involved?

Replies

AUSTRIA

See reply to Q 17.

BELGIUM

- a. and b. This question does not arise in the Belgian system, since the legally aided person does not, as a rule, have the right to choose his lawyer (see, however, the reply to Q.17).

CYPRUS

Not applicable.

DENMARK

Apparently there is no concentration of legal aid work in a small number of lawyers.

FRANCE

- a. No.  
b. -

FEDERAL REPUBLIC OF GERMANY

No. Observations in this respect have not been reported.

GREECE

- a. and b. -

ICELAND

No.

ITALY

- a. The legally aided person has no right to choose from his own counsel.  
b. No.

LUXEMBOURG

No.

NETHERLANDS

No, because of the proviso reported under Q 17 (a). Some concentration is allowed to lawyers who specialise in legal aid cases.

NORWAY

No.

PORTUGAL

- a. & b. Some lawyers willingly accept appointment to the legal aid panel; others regularly ask to be relieved of the duty. Generally speaking, the former are lawyers with a medium-sized or small clientele or lawyers hoping to gain promotion, whereas the others are lawyers with a large clientele or who have other duties in addition to working at the Bar.

SWEDEN

No.

SWITZERLAND

- a. The free choice of one's lawyer, which exists in practice, does not appear to cause difficulties. Only in one small canton has the work tended to become concentrated in the hands of a few experienced lawyers. A satisfactory solution was found thanks to effective co-operation between the courts and the Bar Association.
- b. The lawyers on whom legal aid work was concentrated (generally in family law) seemed to be better known as they had been practising for some time.

TURKEY

See answer to Q 17.

UNITED KINGDOM

It is the case that, for example, in the year ending 31 March 1975 some 11% of solicitors' firms in England and Wales did 47% of all civil legal aid cases. It is not quite clear why this is the case, although it will be true that a particular firm noted for a certain type of work will attract more of that type of work. There is a similar, though less marked, concentration among barristers.

CANADA

Although sufficient information is not as yet available, to this point there has been no strong trend to concentrate legal aid work in a small number of lawyers for this reason in any Canadian jurisdiction. This is a problem under study as a possible factor of delay in the judicial process in some major Canadian cities.



FINLAND

Yes, a concentration is noticeable in urban areas. However, this tendency is not so clear in civil cases as in criminal cases. The main reason may be that some attorneys and other lawyers specialise in cases where legal aid is most frequently granted.

Question No. 19

Does the competent authority or body take account of all the circumstances of the case when appointing a lawyer (the applicant's wishes, language, nature of the case etc)?

Replies

AUSTRIA

Reference is made to the replies to Q 14 to 16.

BELGIUM

In practice, it is not necessary in the present state of affairs to take special circumstances into account when appointing a lawyer.

Where appropriate, account is taken of the language.

CYPRUS

The judge when appointing a lawyer to act for the legally aided person always takes into account all the circumstances of the case.

DENMARK

Yes, to the extent it is practically feasible.

FRANCE

Yes.

FEDERAL REPUBLIC OF GERMANY

The applicant's wishes and the special circumstances of the individual cases are considered as far as possible. However, the indigent party has no claim of right to have a particular attorney at law appointed to him (cf also replies to Q 17 (a) and (b)).

GREECE

Yes.

ICELAND

Usually only the applicant's wishes.

ITALY

The Legal Aid Commission appoints the counsel for the defence, keeping into account all the circumstances of the matter.

LUXEMBOURG

The judge chooses a barrister whom he considers suitable from all points of view.

NETHERLANDS

Yes, where necessary.

NORWAY

See reply to Q 14.

PORTUGAL

If a legally aided person does not specify his lawyer, the judge appoints one for him from the list mentioned in Q 16. Sometimes the technical nature of a case requires a degree of compromise in appointments from the list.

SWEDEN

In most cases the applicant has already contacted a lawyer when his application is made. As this lawyer is appointed by the Board almost without exception (see Mr Hellners' report p 9, Appendix VI to this document, p. 202), there is not much room for taking other circumstances into account.

SWITZERLAND

As a rule, yes. Some cantons formally specify that the applicant's wishes must be taken into consideration when they are justified. It is in the court's own interest to see that the lawyer has an adequate knowledge of the language.

TURKEY

Yes.

UNITED KINGDOM

A grant of legal aid confers the right to be represented, on the terms provided by the Act, by a solicitor and, so far as necessary, by counsel. The lawyers are not, however, appointed by the Law Societies but are selected by the legally aided person himself.

CANADA

Since applicants usually have a considerable degree of freedom in the selection of a lawyer, individual applicants are therefore often able to accommodate any special circumstances on their own account.

In cases where the lawyer chosen does not possess a special expertise required, he will usually assist the prospective client to locate a lawyer who may better serve his needs.

FINLAND

Yes, see also under Q 14.

Question No. 20

- a. Is the lawyer who represents the legally aided person paid any remuneration?
- b. If so, is the remuneration determined according to a fixed scale of fees or on any other basis?
- c. Are the fees comparable with those which would otherwise apply (ie if the same work were carried out for a private fee-paying client)?
- d. Who determines the fees?

Replies

AUSTRIA

The lawyer of a legally aided person is granted a fee only if the opposing party in the proceeding is obligated to refund the costs. If the opposing party is so obligated, the costs are to be fixed as if the lawyer had not been temporarily gratuitously assigned for the party (Article 70, Code of Civil Procedure).

Else the Federal Government has to pay to the Austrian Federation of Bar Councils a reasonable lump sum compensation in respect of the services of lawyers assigned to legally aided persons who under procedural rules would otherwise not be entitled to a fee, such compensation being payable annually not later than on 30 September for the current calendar year (Article 47 of the Lawyers' Statute).

BELGIUM

- a. As a rule, the lawyer of a legally aided person does not receive any remuneration. Article 455, sub-paragraph 3 of the Judicial Code provides, however, that, depending on circumstances, the Office may specify the amount of the contributions due by the client either as a pre-payment or as fees.
- b. There is no fixed scale: the Advice and Protection Bureau determines the amount of contributions to be charged to the client, taking all circumstances into account (applicant's situation, outcome of the proceedings, extent of the duties performed).
- c. No, this is out of the question.

CYPRUS

- a., b., Neither the lawyer whose opinion accompanies the application for
- c. and d. legal aid, nor the lawyer assigned to the applicant by the judge, nor any other person, shall, without permission of the judge, take or agree to take or seek to obtain any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended thereunder. Breach of this rule is punishable as a contempt of court.

The judge may order to be paid to the lawyer assigned any money recovered by the legally aided person, or may charge in favour of the lawyer assigned upon any property recovered by the legally aided person, such sum, not exceeding one fourth of the amount or value recovered, as may seem fit.

DENMARK

- a. Yes.
- b. The fee of a lawyer representing a legally aided person will ordinarily conform to the trial rates of the General Council of the Bar. In a legal aid suit a lawyer shall not demand any other fee than that granted under the legal aid scheme. The ordinary fee will usually be somewhat higher, particularly if the case is won.

FRANCE

- a., b. and c. Lawyers receive allowances varying between the "minima" and "maxima" laid down by Statute according to the nature and difficulty of the case. These allowances are fixed by the legal aid bureau; they are generally lower than the usual fees because their main purpose is to cover the lawyer's expenses.

FEDERAL REPUBLIC OF GERMANY

- a. Yes.
- b. The remuneration is determined according to the Federal Statute on the Fees of Attorneys at Law (in particular Sections 11 and 123). The amount of the fee depends as a rule on the value of the subject of the attorney's work; it appears from the scale of fees laid down in the Federal Statute on the Fees of Attorneys at Law. The fee-unit may become due four times: one for the conduct of the action in general, one for the discussion or hearing of the matter before the court, one for participation in the taking of evidence, and one for an amicable settlement or disposal of the matter by withdrawal of the action or a modification of the administrative act challenged by a legal remedy.
- c. Up to a value in dispute of DM 3,200 the fees are equal to the normal fees an attorney receives for his work. When the value in dispute is higher, the fees paid for the work of an attorney assigned to an indigent party are less than the normal fees in comparable cases.
- d. Upon the application of the attorney at law the fees are taxed by the clerk of the court where the proceedings are, at that stage, pending (ie Court of First Instance, Appellate Court, Court of Review) (Section 128 of the Federal Statute on the Fees of Attorneys at Law).

GREECE

- a. Not beforehand (Article 200, para 1, Code of Civil Procedure).
- b. and c. -

ICELAND

- a. Yes.
  - b. The remuneration is determined according to a fixed scale of fees (the ordinary scale of the Bar Association).
  - c. Yes.
  - d. The court.
- ./.

ITALY

- a. As a principle, the defence of needy persons is free (Article 1 Decreto 3282/1923). However, the counsel may ask that his fees be debited to the losing party; if the case has a favourable outcome, he may request such fees from the other party (Article 40 Decreto 3282/1923).
- b. Counsel's fees are fixed according to the regulations in force.
- c. Fees are the same as the fees normally paid to the counsels freely chosen by the parties able to pay.
- d. -

LUXEMBOURG

- a. On completion of the case, the solicitor presents a bill for his expenses and emoluments to the registry, which deals with settlement. Barristers receive no fee.
- b. Emoluments are paid according to a fixed scale.
- c. The fees are very low, much lower than a private client would normally be charged for the same services.
- d. -

NETHERLANDS

- a. Yes.
- b. Fixed scale.
- c. Comparison is difficult, because fees for fee-paying clients are not determined according to a fixed scale. On average, the remuneration is probably lower than the fees which would otherwise apply.
- d. The government (Royal Decree of 24 December 1957, last amended on 6 January 1977).

NORWAY

- a. Yes.
- b. The lawyers' remuneration is determined according to a fixed scale of fees.
- c. The scale fees fixed by the public authorities are somewhat lower (30-50 per cent) than the fees normally applicable in cases where the client himself pays the lawyer's fees.
- d. The fee is determined by the court dealing with the case.

PORTUGAL

- a., b., c. and d. The lawyer appointed is entitled to remuneration from the legally aided person. This remuneration is decided by the judge on the basis of a system similar to the "procuradoria" (allowance paid to the winning party for the trial costs), and is very low by comparison with the vague criteria determining the fixing of fees for services rendered to a private fee-paying client. It

should also be noted that frequently the remuneration fixed by the judge is not received, as the legally aided person has no means or, if he has the means, he is not willing to pay and unless his fortune changes for the better his property is not seizable.

#### SWEDEN

- a. Yes.
- b. See Mr Hellners' report p 10 (Appendix VI to this document, p. 203).
- c. Yes.
- d. The fee is determined by the court when there have been proceedings before the court, and otherwise by the Legal Aid Board.

#### SWITZERLAND

- a. Yes.
- b. In most cantons there is a scale of lawyers' fees.
- c. Remuneration for legal aid work in most cantons is between 50% and 100% of normal rates. Lower rates are paid only in a very few cantons. The lawyers' necessary expenses must be reimbursed in full.
- d. The court.

#### TURKEY

- a. Yes.
- b. According to a fixed scale.
- c. Yes.
- d. -

#### UNITED KINGDOM

Solicitors and counsel acting for assisted persons have a statutory right to costs, which are payable out of the legal aid fund. The amounts due are normally ascertained by a legal aid taxation carried out by a court taxing officer, who will allow solicitors and counsel to be paid a reasonable amount for work reasonably done within the scope of the legal aid certificate. In certain cases, however, (for example in magistrates' court cases or cases which are settled at an early stage) the fees are assessed by an Area Committee without taxation. There are no fixed scales of fees in England and Wales; the amounts payable are determined on the taxation or assessment. In Scotland the fees payable for legal aid work are related to the scales prescribed for civil court work generally. For work done in the House of Lords and the Supreme Court and in all civil courts in Scotland the solicitor's profit costs and counsel's fees are subject to a statutory deduction of 10%. In all other cases, however, the full amounts allowed on the taxation are payable.



CANADA

- a. and b. In all cases the lawyer representing the legal aid client is remunerated either according to a set scale of fees, in the case of lawyers in private practice, or by a salary in the case of lawyers employed by legal aid clinics.
- c. The fees paid to lawyers for services provided to legal aid clients are provided for by established fee schedules which are usually roughly comparable to fees charged private fee-paying clients. They are, however, subject to a reduction of 25%.
- d. The fees are determined by the provincial government officials responsible for the legal aid plans in consultation with the provincial bar society who establish fee schedules for each of the various types of legal services provided by the plans.

FINLAND

- a. The counsel appointed, not however a communal legal advisor, is entitled to reasonable compensation for his work and loss of time as well as to compensation for all necessary costs incurred out of State funds. A communal legal advisor is paid his salary by the commune.
- b. No fixed scale is used. The Ministry of Justice confirms the grounds according to which remuneration shall be paid. In ordering compensation, particularly the quality of work done shall be taken into account as a factor influencing the amount.
- c. Yes.
- d. The proper court.

Question No. 21

When is the lawyer free to request a supplementary fee from the legally aided person?

Replies

AUSTRIA

The lawyer has no right to request a supplementary fee from the legally aided person.

BELGIUM

The lawyer does not have the right to request a supplementary fee from the legally aided person. The only case provided for is that referred to in Article 455, sub-paragraph 3 mentioned in Q 20.

CYPRUS

The lawyer is in no case free to request a supplementary fee from the legally aided person.

DENMARK

See reply to Q 20.

FRANCE

The lawyer designated may, with the authorisation of the President of the Bar to which he belongs, request a fee from his client when the judgement has provided the beneficiary of legal aid with resources such that, had they existed on the day when the request for legal aid was made, even partial aid would not have been granted.

FEDERAL REPUBLIC OF GERMANY

The attorney at law may require a supplementary fee only when an order for subsequent payment has been made (Cf reply to Q 22 (a)).

GREECE

-

ICELAND

Never.

ITALY

In no case the counsel may request a fee from the legally aided person.

LUXEMBOURG

No relevant provisions.

NETHERLANDS

Never.

NORWAY

The lawyer cannot accept a fee from his client for work remunerated by the public exchequer under the legal aid scheme.

PORTUGAL

A lawyer is prohibited from accepting or levying from a legally-aided person any sum beyond the fee fixed at the end of the trial by the judge.

SWEDEN

That is not allowed.

SWITZERLAND

As a rule, the lawyer has no such right (see exceptions under Q 22). He would incur disciplinary sanction.

TURKEY

Never.

UNITED KINGDOM

Never. Solicitors and counsel receive their remuneration out of the legal aid fund, and they may accept payment from no other source.

CANADA

The lawyer is not permitted to request a supplementary fee from a legally aided person.

FINLAND

In no case. Counsel appointed does not have the right to request a supplementary fee from the legally aided person. Any agreement upon this is void. If the person has been granted partially free legal aid, the part of the costs which he is obliged to repay goes to the State.

**CONTINUED**

**1 OF 3**

Question No. 22

- a. Can the decision to grant legal aid be terminated or withdrawn or can the legally aided person be requested to refund in part (or in full) sums paid under the legal aid scheme, if:
  - i. he recovers money or property as a result of the proceedings?
  - ii. his financial circumstances otherwise improve during or after the proceedings concerned?
  - iii. in other circumstances?
- b. What are the time-limits for such action?
- c. Can a decision to terminate or withdraw legal aid in such circumstances be given retrospective effect?

Replies

AUSTRIA

Article 68 of the Code of Civil Procedure provides for both termination (paragraph 1) and withdrawal (paragraph 2) of the decision. The Court of the First Instance, either ex officio or if so requested - also by the appointed lawyer, as was stated in the above replies to questions 17 and 18 - has to terminate legal aid insofar as a change in the party's financial situation so requires or continuation of the plaint or defence seems obviously wilful or hopeless.

The Court of the First Instance, either ex officio or if so requested - also by the appointed lawyer - has to withdraw legal aid insofar as it turns out that the circumstances originally assumed did not obtain. In such a case the party has to pay or refund the sums from the payment of which he was temporarily exempted as well as to remunerate the lawyer assigned to him in accordance with the scale of fees. The right to remuneration has to be determined by a court decision.

The legally aided person has to be obligated by a decision to pay up the sums in respect of which he was temporarily exempted from payment and which are still outstanding as well as to remunerate the lawyer assigned to him in accordance with the scale of fees insofar and as soon as he is able to do so without impairment of the necessary subsistence. An obligation to pay up those amounts cannot be imposed after three years have elapsed from the close of the proceeding (Article 71, para 1, Code of Civil Procedure).

The decision ordering payment has to prescribe to the party first to refund the amounts enumerated in Article 64, para 1, sub-para 1 (b) to (f) (costs of official action outside the court; fees of witnesses, etc; costs of trustee and cash outlay); then to pay the lawyer's remuneration, fixing its amount at the same time, and at last to pay the amounts enumerated in Article 64, para 1, sub-para 1 (a) of the Code of Civil Procedure (court fees, transcribing fees and other public fees fixed under federal legislation); such decision is enforceable only after it has become final.

BELGIUM

- a. Since legal aid is only an advance, it may be withdrawn on two conditions:
  - 1. that it has been established that circumstances of the person's estate, revenue or commitments have changed since the decision was taken to grant legal aid;
  - 2. that it has been established that the beneficiary is consequently able to pay the sums advanced on his behalf.

As long as the proceedings are still in progress, aid may be terminated or withdrawn if it has been obtained on the basis of false declarations or if the purpose of the proceedings instituted is different from that for which the original application for legal assistance was granted. (Article 698, Judicial Code.)

- b. The time-limit for recovering sums owed to the Treasury is 30 years (Article 697 Judicial Code).
- c. A decision to terminate legal aid can be given retrospective effect.

CYPRUS

- a. If the legally aided person pays or agrees to pay any money to any person whatsoever either in connection with his application for legal aid or the action taken or defended thereunder, the application for legal aid shall be refused or, if already granted, shall be terminated. If the lawyer assigned to the legally aided person discovers that he is possessed of means beyond those stated in the affidavit in support of his application for legal aid, he is bound at once to report the matter in writing to the court. The judge may at any time revoke the order granting the application for legal aid, and thereupon the applicant shall not be entitled to legal aid in any proceedings to which the application for such aid relates, unless otherwise ordered by the judge.
- b. The time limit for such action is 6 years.
- c. A decision to terminate or withdraw legal aid which is always at the discretion of the judge, may be given retrospective effect.

DENMARK

- a. Legal aid may be withdrawn where it has been pledged on incorrect premises, particularly where an applicant has misrepresented his financial situation. It may probably also be withdrawn in the event the finances of the applicant improve considerably in the course of the trial. Conversely, the outcome of the suit will not affect the legal aid.
- b. There are no special time-limits.
- c. The withdrawal will probably be retroactive only in case of fraud, see above.

FRANCE

- a. Legal aid may be withdrawn, in part or in full, if during the case or performance of the acts for which it was granted, the applicant acquires resources such that, had they existed on the day when the request for legal aid was made, even partial aid would not have been granted.

Legal aid must be withdrawn, even after the case or performance of the acts in question, if it was obtained by false declarations or on production of inaccurate documents.

- b. No time-limit.
- c. Yes.

FEDERAL REPUBLIC OF GERMANY

- a. Legal aid is to be withdrawn if it is evident that the conditions for granting it were not, or are no longer fulfilled (Section 121 of the ZPO). This is the case especially if the financial circumstances of the indigent party considerably improve during the proceedings or if he has surreptitiously obtained legal aid.

If, as a result of the outcome of the proceedings, the financial circumstances of the indigent party improve considerably, he is subsequently ordered to pay any costs due to the court cashier's office, the attorney at law and the bailiff which he had first been exempted from paying on account of indigence (Section 125, para 1 of the ZPO). Likewise, if the financial circumstances of the indigent party have improved considerably and he is ordered to pay the costs of the proceedings, he must then pay any amounts which the opponent was exempted from paying. (Section 195, para 2 of the ZPO) (cf reply to Q 25) (cf. also reply to Q 10, in fine.)

- b. Legal aid may be withdrawn only until the termination of the proceedings before the court where they are, at that stage, pending (Court of First Instance, Appellate Court, Court of Review). The issuance of the order of subsequent payment is not subject to any time-limit.
- c. As a rule, the withdrawal of legal aid is effective only in the future. However, especially in cases where legal aid was surreptitiously obtained, it may retrospectively be withdrawn as an exception. The order for subsequent payment, which may be combined with the decision to become due from the payment of which the party had been temporarily exempted as a result of the previous granting of legal aid.

GREECE

- a. i. and ii. Yes, a decision to grant legal aid may be terminated or withdrawn, if the beneficiary recovers capital or property as a result of the proceedings or if his financial position has improved by one means or another during or after the proceedings (Article 202, Code of Civil Procedure).
- iii. The decision to grant legal aid may be terminated or withdrawn and the beneficiary may even be required to reimburse, in part or in full, the sums granted, if legal aid has been obtained by means of fraudulent declarations and evidence (Articles 202, 204, Code of Civil Procedure).
- b. -
- c. Yes, in the case referred to under Q 22 (a) (iii) (Article 204, Code of Civil Procedure).

ICELAND

- a. i. Yes.
- ii. Yes.
- iii. Yes, for instance if it later be discovered that the legal aid was obtained fraudulently.
- b. Four years, except when legal aid is obtained by fraud then it is ten years.
- c. Yes.

ITALY

- a. The decision of the Legal Aid Commission which has granted legal aid may be revoked in the following cases:
  - i. when the judicial claim is settled by an arrangement between the parties (Article 38 Decreto 3282/1923).
  - ii. if the financial conditions of the party eligible for legal aid have changed, the measure may be requested by "INTENDENZA DI FINANZA", the public revenue district office (Article 21 Decreto 3282/1923).
  - iii. when the judicial claim proves groundless during the trial; when the indigent party avails itself of the services of a different lawyer from the one who has been appointed; in any case in which it is deemed advisable to stop the proceedings (Article 34 Decreto 3282/1923).
- b. Legal aid may be cancelled at any time during the trial.
- c. No.

LUXEMBOURG

- a. If, in the course of proceedings, the court finds that legal aid is no longer necessary, it may, either on its own initiative or on application by the other party, withdraw legal aid. All fees and costs held in abeyance then become payable immediately.
  - Such is the case where the financial situation of the recipient improves during or after the proceedings.
- b. There is a time-limit of 10 years on action by the registry to recover legal aid expenditure.
- c. Legal aid can be terminated retroactively with respect to fees and costs held in abeyance, that is to say not yet presented for payment.

NETHERLANDS

- a. i. Yes.
- ii. Yes, if during the proceedings; not afterwards.
- iii. Yes, eg if obtained on false pretences.
- b. No fixed limits.
- c. Yes, but in some districts it is never done.

NORWAY

- a. i. Yes (If the right to demand a refund has been stipulated at the time legal aid was granted).
- ii. Yes (ditto).
- iii. Yes, if the conditions for the grant are violated.
- b. There is no formal time-limit for presenting a demand for refund by the public authorities under (i) above.
- c. A grant for legal aid cannot be withdrawn if the legally aided person himself does not agree.

PORTUGAL

- a. A decision to grant legal aid can always be reversed if the financial situation of the person concerned improves so that he has adequate means to allow him to plead without aid and this can be checked as the trial proceeds.

Legal aid is also withdrawn when documents come to light proving that the reasons for which the aid is granted are ill-founded; when the documents used as a basis for the concession have been declared false by a decision having the force of res judicata; and if, on appeal, it is confirmed that the person granted legal aid was a fraudulent litigant.
- b. There is no time-limit for cancelling legal aid.
- c. The decision to stop legal aid may have a retroactive effect (see the end of sub-paragraph (a)). Suspension of legal aid is unknown under our system.

SWEDEN

- a. i. Yes.
- ii. Yes.
- iii. If the applicant has obtained legal aid by deceit.
- b. Such action has to be taken before the legal aid matter is finished and the Legal Aid Board has made the final account vis-à-vis the aided person.
- c. Yes, in some cases.

SWITZERLAND

- a. Two cases must be distinguished:
  - i. Withdrawal of legal aid during the proceedings is possible,
    - if it appears that the financial conditions for legal aid are no longer or never were satisfied and that the grant of aid was based on false information (this gives rise to an obligation to refund the sums paid - see (ii)).

- if it appears that the applicant's case is bound to fail, legal aid granted for the entire cantonal procedure may first be withdrawn by the higher court.
- ii. - if the party subsequently acquires sufficient income or capital, the costs must be refunded to the State. In certain cantons, he is also obliged to pay a supplementary fee to the lawyer (of course this only arises if the opposing party has not been ordered to pay costs).
- b. In some cantons, 10 years after the judgment has become final. In the rest, the general limitation periods for public law claims, where in certain cases time does not begin to run until the conditions under which a refund becomes payable are fulfilled.
- c. There is no retrospective effect, in particular out of consideration for the lawyer who has given his services. On the other hand the above-mentioned obligation to refund may apply.

#### TURKEY

- a. The decision can be terminated or withdrawn if the legally aided person's circumstances improve during or after the proceedings.
- b. None.
- c. No.

#### UNITED KINGDOM

If a legally aided person recovers money or property as a result of the proceedings his legal aid will not be withdrawn, but the money or property recovered, or preserved, will be applied (subject to certain exceptions particularly of maintenance payments) to make good any deficiency in the legal aid fund as a result of the proceedings, the charge to make good this deficiency does not apply to the first £2,500 of property referred as a consequence of judgments ordering lump sum maintenance of the transfer of property in matrimonial and inheritance cases.

If the assisted person's financial circumstances otherwise improve significantly his disposable income, disposable capital, and maximum contribution will be reassessed, and his contribution may either be increased or, if the improvement in his means is such as to put him out of scope financially, his legal aid certificate will be discharged.

The Area Committee have the power, in certain circumstances to discharge or revoke a legal aid certificate. The effect of discharge is to cancel the certificate from the date of discharge so that the assisted person will therefore be liable for any costs incurred. Revocation, however, cancels the certificate ab initio, so that the person concerned is deemed never to have been an assisted person in relation to the proceedings for which the certificate was granted and is thus liable for the whole of the costs incurred.

The committee will discharge the certificate, if for example, the assisted person's means are, after they have been redetermined, outside the financial limits of eligibility, or if the committee consider that it is no longer reasonable for the assisted person to continue to receive legal aid (for example if he requires the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the legal aid fund). They may revoke a certificate if, for example, the assisted person is found to have made an untrue statement about his resources in applying for legal aid, or if he has wilfully failed to furnish the committee with material information about his case. The court also has power in certain circumstances to discharge or revoke certificates but in practice it very rarely exercises such power.

#### CANADA

- a. The decision to grant legal aid may not be terminated or withdrawn in most jurisdictions if the individual recovers money or property as a result of the proceedings. If an individual's financial circumstances improve, however, this may be done. It may also be done if the individual refuses to comply with the requirements set down for eligibility for legal aid (ie fails to fill in proper forms, etc) or if he fails to co-operate with his lawyer.

If the individual recovers money or property with the assistance of legal aid, in most cases a discretion exists to require him to contribute to the cost of the legal aid received out of the money or property recovered.

- b. Time-limits for the recovery of sums due to a legal aid plan are usually not specifically set out in the relevant provincial legislation. Since these sums are usually recoverable in the same manner as ordinary debts, however, it would appear that the effective time-limit would be six years from the date of the provision of the service.
- c. A decision to terminate or withdraw legal aid may be made retroactively in the discretion of the appropriate authority.

#### FINLAND

- a. i. No.
  - ii. If, subsequent to the granting of legal aid, it is observed that and the right to receive it is lacking or has lapsed, the court in
  - iii. which the case is pending shall revoke the order. In connection with the revocation of the order for legal aid the court shall order the person to reimburse to the State the costs involved, either in full or in part, unless it is deemed to be unfair.
- b. As long as the case is pending.
- c. Yes.



Question No. 23

- a. Must a decision granting legal aid be taken before the proceedings have started and, if not, can the decision be given retrospective effect?
- b. Can legal aid be granted provisionally in an urgent matter?

Replies

AUSTRIA

A decision granting legal aid need not be taken before the proceedings have started. The exemptions and rights in respect of which legal aid is granted take effect at the date when the statement of pecuniary circumstances is submitted to the court; however, where in the course of the proceeding further benefits are granted, these become effective at the date when the respective application is filed (Article 64, para 3, Code of Civil Procedure).

There is neither a provision for a decision granting legal aid to be given retrospective effect nor can legal aid be granted provisionally in an urgent matter.

BELGIUM

- a. A decision granting legal aid need not necessarily be taken before proceedings have started. It is not, as a rule, given retrospective effect.
- b. Article 673 of the Judicial Code provides that in urgent cases and in all matters, the President of the Tribunal or Court and, during the proceedings, the Judge hearing the case may, upon even verbal request, grant legal aid for acts specified by them.

CYPRUS

- a. A decision granting legal aid is always taken before proceedings have started, except in cases of an appeal but in such a case cannot be given retrospective effect.
- b. Legal aid cannot be granted provisionally even in an urgent matter.

DENMARK

Legal aid shall normally have been granted before completion of the trial but may be granted retroactively where warranted by circumstances. This happens rarely. Legal aid cannot be granted temporarily.

FRANCE

- a. No, it can even be taken after the decision on the merits has been given provided that the application for legal aid was made in time and that the delay is not attributable to the applicant. Normally the decision to grant legal aid takes effect on the date on which it is made except where the bureau decides otherwise.
- b. Yes.

FEDERAL REPUBLIC OF GERMANY

- a. In principle the decision on the granting of legal aid is taken before the court deals with a case on its merits. However, the court may grant legal aid also in the course of proceedings and decide that it shall be effective from the time of filing a petition for legal aid.
- b. The law does not provide for any provisional granting of legal aid. Nor is there a need for any such provision: in exceptional cases legal aid may be granted retrospectively and in urgent cases usually the issuance of a temporary injunction will be applied for. In the proceedings for the issuance of a temporary injunction will be applied for. In the proceedings for the issuance of a temporary injunction no court fees are payable in advance and representation by an attorney is not mandatory.

GREECE

- a. At any stage in the proceedings (Article 196, para 1, Article 198, Code of Civil Procedure); no.
- b. Yes.

ICELAND

- a. No, and it can be given retrospective effect.
- b. No.

ITALY

- a. Legal aid may be granted before the trial or during the trial but in no case it has a retroactive effect.
- b. Yes (Article 25 Decreto 3282/1923).

LUXEMBOURG

- a. In practice, applications for legal aid are made before proceedings begin. Although the law makes no provision to this effect, it may be assumed that a party overtaken by hardship in the course of the trial may apply for legal aid at that stage.
- b. Legal aid may be granted in all cases, including urgent matters.

NETHERLANDS

- a. 1. No.  
2. Yes.
- b. Yes.

NORWAY

- a. Legal aid may be granted at any stage of the proceedings, even after the proceedings have been terminated. (Such a decision can be given retrospective effect.)
- b. Exemptions may be granted for the pre-payment of court costs in cases where a party has applied for legal aid. No other form for provisional legal aid is granted (cf Act of 18 December 1959 No. 11, para 4).

PORTUGAL

- a. and b. The decision to grant legal aid is always taken during the trial (even if it is a trial preliminary to the main trial). It has retroactive effects in the sense that the application always entails suspension of any demand for payment of costs (the applicant may use unstamped paper and he is not required to pay sums as preparos (see Q 9, (d) ); the granting of legal aid implies that these costs will not be demanded. If the application for legal aid is made while the proceedings are in progress, the granting of it has effect only for acts subsequent to the request.

In urgent procedure, the application may be made when the proceedings are instituted which give rise to the trial. Hence in view of the effects which, under the law, stem from the mere lodging of an application, it is not possible to speak of aid granted "provisionally" but only of the effects "of the application for aid".

SWEDEN

- a. Applications for legal aid are practically always made before the proceedings start. In principle only costs arising after the application are covered by the legal aid. Lawyer's remuneration, however, can be covered retrospectively by the legal aid if the application is made without delay (within one week).
- b. The legal aid scheme has no special arrangements for urgent matters. But urgent matters will usually be handled rapidly.

SWITZERLAND

- a. The application may be presented at any time. In principle, the decision is retroactive to the commencement of the proceedings (only a very few cantons exclude any retrospective effect). There is no retrospective effect for costs already paid. The general obligation to pay legal costs in advance results in applications being submitted at the commencement of the proceedings, except where the conditions required for granting legal aid are only satisfied in the course of the proceedings (eg the costs are higher than expected).
- b. Legal aid can be granted provisionally in 2 cantons. However it is not necessary to proceed in this fashion: when in doubt legal aid is always granted, and in very urgent cases the judge may at once waive the provision for costs.

TURKEY

- a. The decision may be taken at any stage in the proceedings.
- b. No.

UNITED KINGDOM

- a. Legal aid may be granted at any stage of the proceedings, but it cannot be given retrospective effect, so as to enable costs incurred before the grant of legal aid to be paid out of the legal aid fund.
- b. Yes; in cases of urgency where there is insufficient time in which to issue an ordinary certificate, an emergency certificate may be granted, as a stop-gap, without going through the normal stages of granting an application. Such a certificate may be granted at very short notice, if necessary over the telephone. The certificate will have an initial period of validity and unless it is replaced by an ordinary legal aid certificate before its validity expires it must, at the end of that time, be discharged or revoked. If a replacement certificate is issued it will take effect from the date of issue of the emergency certificate.

CANADA

- a. Although in some provinces no specific provisions exist, a decision granting legal aid may be made in some after the proceedings have started, and in appropriate cases the decision to grant legal aid may have retrospective effect.
- b. Legal aid may be granted provisionally in urgent matters.

FINLAND

- a. Legal aid can be granted during the steps preliminary to any proceedings or at any time after the proceedings have been instituted, until the matter in question has been finally decided upon. Free legal aid may be granted retroactively.
- b. Yes. If the Court of First Instance is not assembled, it is for the judge to grant a temporary certificate for legal aid to be in force until the court assembles. When an appeal has been lodged free legal aid is provisionally granted by the lower court. The temporary certificate is in force until the case comes before the Appellate Court.

Question No. 24

Are the following decisions subject to appeal (and, if so, to which authority or body and by whom):

- a. the refusal to grant legal aid;
- b. the granting of legal aid;
- c. the conditions subject to which legal aid is granted;
- d. the appointment of a particular lawyer;
- e. a termination or withdrawal of the decision to grant legal aid;
- f. the assessment of the fee?

Replies

AUSTRIA

The decision granting legal aid and the refusal to grant such aid - or partial aid - as well as the appointment of a lawyer and the decision to terminate or withdraw legal aid can be attacked by an appeal. The opposing party, too, has a right of appeal (Article 72, para 2, Code of Civil Procedure). The parties are not required to be represented by lawyers in action taken with the court in the context of legal aid even in proceedings for which representation by a lawyer is compulsory. Appeals from decisions concerning legal aid may also be made orally with a court for being placed on record.

BELGIUM

- a., b., Yes, Articles 688 and 689 of the Judicial Code provide that decisions by magistrates and Legal Aid Offices may be appealed against by the applicant and the Public Prosecutor ("Procureur du Roi") in respect of a decision by a Legal Aid Office attached to a Court of First Instance or to a commercial court.
- c.
- d. The appointment of a lawyer is not subject to appeal.
- e. A decision to terminate or withdraw legal aid proper is subject to appeal.
- f. No, the assessment of the fee is not subject to appeal.

CYPRUS

The general rule in civil proceedings is that any decision or other order of a judge is always subject to appeal.

All appeals are dealt with by the Supreme Court of Cyprus in its appellate jurisdiction.

DENMARK

- a.-c. Such decisions may be appealed to the Ministry of Justice.
- d. The party is normally free to select a lawyer of his own choice.
- e. This decision may be appealed to the Ministry of Justice.
- f. A lawyer may appeal the assessed fee to a higher court.

FRANCE

Any decision by a legal aid bureau other than the Central Bureau (Bureau Supérieur), whether allowing or rejecting the request, may be appealed against in whole or in part. However, the appeal may be preceded by a second consultation of the bureau.

Appeals are dealt with by the following authorities:

- Those against decisions of the bureau attached to the "Conseil d'Etat" and the Jurisdictional Court, by the Minister of Justice ("Garde des Sceaux");
  - those against decisions of other bureaux, by the Department of the Public Prosecutor.
- Decisions are referred to the higher level bureau as follows:
- Decisions of bureaux attached to a district court ("tribunal de grande instance") are referred to the bureau attached to the Court of Appeal within whose area the bureau is located;
  - decisions of bureaux attached to an administrative court are referred to the bureau attached to the "Conseil d'Etat" and the Jurisdictional Court;
  - decisions of bureaux attached to a court of appeal to the Court of Cassation or to the "Conseil d'Etat" and the Jurisdictional Court are referred to the Central Legal Aid Bureau (Bureau Supérieur d'Aide Judiciaire) attached to the Ministry of Justice.

The person concerned may request the President of the Bar ("Bâtonnier") to designate a different lawyer from that originally appointed.

FEDERAL REPUBLIC OF GERMANY

- a. Against the order of the Court of First Instance refusing or withdrawing legal aid the petitioner may file an objection, as a rule, with the court that made the order (Section 127, second sentence of the ZPO). This court may redress the grievance. If it does not do so, the objection will be transmitted to the next higher court for decision.
- b. There is no remedy against the order granting legal aid (Section 127, first sentence of the ZPO).
- c. In so far as the order granting legal aid contains limitations (eg simultaneous order for subsequent payment; cf reply to Q 10) also the applicant may file an objection.

- d. Against the order assigning to the indigent party a certain attorney-at-law the indigent party as well as the attorney concerned may file an objection unless the presiding judge of the Appellate Court has made the order (Section 116, para 3 of the ZPO).
- e. As regards withdrawal of legal aid, see reply to para (a) above. An objection may be filed against the order for subsequent payment by the indigent party and, against the court's refusal to issue an order for subsequent payment, by the State and the assigned attorney-at-law (Section 127, second sentence of the ZPO).
- f. Against the taxation of fees and expenses of the legal aid counsel the attorney himself and the State may lodge a protest ("Erinnerung"). If the clerk of the court does not redress the grievance, the protest will be decided on by the court (Section 128, para 2 of the Federal Statute on the Fees of Attorneys). Again, this decision may be challenged by an objection, provided the value of the subject matter in dispute exceeds DM 100.

#### GREECE

- a., b., c., d., e., and f. No.

#### ICELAND

- a. Not appealable.
- b. Not appealable.
- c. The court can quash conditions that are inconsistent with the provisions on legal aid.
- d. Not appealable.
- e. Such decisions could be tried by the ordinary courts.
- f. The assessment of the fee is done by the courts and is subject to appeal with the case itself.

#### ITALY

All decision relating to admission to legal aid, its revocation, the amount of counsels fees, measures concerning the appointment or the withdrawal of counsels may be appealed against before the Legal Aid Commission, set up at any Court of Appeal (Article 22 Decreto 3282/1923).

#### LUXEMBOURG

The judge's decisions regarding the granting, refusal and conditions of legal aid are not subject to appeal.

#### NETHERLANDS

- a. If the Legal Aid Board refuses to designate a lawyer, the applicant has a right of appeal to the President of the District Court. A court's refusal to confirm the granting of legal aid is not subject to appeal.

- b. No.
- c. No.
- d. No.
- e. As under (a).
- f. No, but the lawyer can, if necessary, claim his fixed fee in court.

#### NORWAY

- a. If a court of law has refused legal aid, the application may be reviewed by the Ministry of Justice. In cases where the Ministry of Justice has refused free legal aid there is no appeal.
- b. No.
- c. Cf (a) above; the court's grant of legal aid is not given on any other conditions than those applicable under the general provisions relating to legal aid.
- d. Cf the reply to Q 14 (b) above.
- e. Cf reply to Q 22 (c) above.
- f. The court's assessment of the fee can be appealed to the Ministry of Justice.

#### PORTUGAL

- a.-f. The only appeal permitted is against rejection of the application for legal aid. Case law has also recognised appeal against the granting of partial aid only. The right of appeal is limited to the unsuccessful applicant for aid.

If legal aid has been refused by a Court of First Instance, appeal can be made to the Court of Appeal (Tribunal da Relação). In the Court of Appeal and the Supremo Tribunal de Justiça (which is not only a Court of Cassation), decisions on legal aid are the responsibility of the Rapporteur and appeals from these decisions may be lodged with a conference of the judges responsible for the case. There is no legal provision for appeal against the appointment of a given lawyer nor against the sum fixed for his fees.

#### SWEDEN

- a. Yes, by the applicant.
- b. No.
- c. Yes, by the applicant.
- d. Yes, by the applicant (not by a "refused" lawyer).
- e. Yes, by the applicant.
- f. Yes, by the lawyer.

Appeal against a decision by a court (in practice the assessment of fee) is made to the superior court. Appeal against a decision by a Legal Aid Board is made to the central authority for the legal aid scheme, the Courts Administration Board.

SWITZERLAND

- a. Decisions refusing legal aid pronounced by a lower authority may be referred to a higher authority. If all cantonal remedies have been exhausted or there are none (ie when the decision is made by a central administrative authority), a public law appeal lies to the Federal Court.
- b. The opposing party may refer the decision to grant legal aid to a higher authority only in certain cantons.
- c. Under conditions set out in (a) and (b).
- d. No. (The party has a right to refuse only in one canton.)
- e. Under the same conditions as in (a).
- f. Lawyers have a right to appeal in certain cantons.

TURKEY

Only the assessment of the fee is subject to appeal. This appeal is to the Court of Cassation.

UNITED KINGDOM

- a. If legal aid is refused by a local committee (which is responsible for granting legal aid for all cases except appellate cases) there is (other than as regards proceedings in magistrates' courts) a right of appeal to an area committee. There is no right of appeal against any decision by an area committee (which is responsible for granting legal aid for appellate cases); it is, however, open to an applicant for legal aid to make a fresh application to the committee. There is no appeal against the assessment of the resources of applicants for legal aid.
- b. No appeal as such lies, but any party may give information to an area committee with a view to persuading them to discharge or amend or revoke an assisted person's certificate.
- c. An appeal to an area committee lies against the terms and conditions attached by a local committee to the grant of a certificate for proceedings, other than those in magistrates' courts. There is no such right of appeal against conditions laid down by an area committee, but it is always open to the assisted person to apply for his certificate to be amended.
- d. The lawyer is selected by the assisted person himself; there is no appeal against his decision.
- e. No appeal lies, but the assisted person will normally be given notice that discharge or revocation is being considered, and will have an opportunity to make representations.
- f. The assisted person, his solicitor, and his counsel all have the right, with the authority of the Law Society, to challenge the assessment made on a legal aid taxation by objecting to the taxation, (in which case the taxing officer must reconsider and review the taxation); by going to a review before a judge; and by appealing from the judge's decision. There is also a right of appeal against an assessment by an area committee. In addition, any other party to proceedings to which an assisted person is a party may object to a taxation or apply to a judge to review the taxation of costs for the purpose of assessing his liability to pay costs. (There is in this no difference between

legally aided and other proceedings.) In Scotland, initial taxations are carried out by a committee of the Legal Aid Central Committee and disputes are referred to the auditors of the court, against whose decisions written representations may be made to the court.

CANADA

- a. and b. In some provinces, an appeal lies to a committee from a decision of a local director to refuse legal aid. In certain provinces there are no provisions allowing for an appeal from a decision to grant legal aid except in the case where the decision of the local director is reversed by such a committee, in which case this decision may in turn be reviewable by the provincial director of the legal aid plan. In other provinces the committee deciding the matter may consider only the economic status of the applicant and not the existence of the rights which he asserts. In provinces where provisions do not exist current practice usually allows an informal appeal of these decisions.
- c. and d. In most provinces, a specific right of appeal from the conditions on which legal aid is granted is not set out in legislation in Canadian jurisdictions, nor is such a specific right of appeal set out with regard to the appointment of a specific lawyer to handle a matter for a client.
- e. Generally the situation with regard to a termination or withdrawal of a decision to grant legal aid is the same as it is with regard to the refusal to grant legal aid. (See above.)
- f. There are no specific provisions relating to the appeal of decisions relating to the assessment of the fee, although this might be done informally in some jurisdictions.

FINLAND

- a. Yes. To a higher court. By the applicant, and the public prosecutor, whether he has attended the case or not.
- b. No.
- c. Yes. As under (a).
- d. No.
- e. Yes. As under (a).
- f. Yes. To a higher court. By the counsel, and the public prosecutor, whether he has attended the case or not.

Question No. 25

Does the granting of legal aid to one party result in the other party being exempted from advancing certain costs during the proceedings?

Replies

AUSTRIA

The granting of legal aid to one party does not result in the other party being exempted from advancing certain costs during the proceedings.

BELGIUM

The granting of legal aid to one party does not result in the other party being exempted from advancing certain costs during the proceedings.

CYPRUS

The granting of legal aid to one party does not result in the other party being exempted from advancing certain costs during the proceedings.

DENMARK

No.

FRANCE

Yes, certain taxes.

FEDERAL REPUBLIC OF GERMANY

The granting of legal aid to the plaintiff or to an appellant in appellate or review proceedings at the same time has the effect of temporarily exempting the opponent from the court fees and expenses (Section 120 of the ZPO). If the opponent has been ordered with final and binding effect to pay the costs of the proceedings, the court fees and expenses are collected from him (Section 123, para 2 of the ZPO). On the other hand, if the indigent party has been ordered to pay the costs of the proceedings, the court fees and expenses for which the opponent may be liable shall not be collected from him (Section 58, para 2, second sentence of the Court Fees Act).

GREECE

No.

ICELAND

No.

ITALY

No.

LUXEMBOURG

If the recipient of legal aid wins, his costs are recovered from the losing party. If he loses, the expenditure incurred by him will be charged to the State.

NETHERLANDS

No.

NORWAY

No.

PORTUGAL

The granting of legal aid to one party neither favours or disfavors the other party. The other party is still bound to respect all the rules concerning legal costs unless it has also obtained legal aid.

SWEDEN

There are no rules on advancing costs during the proceedings.

SWITZERLAND

No.

TURKEY

No.

UNITED KINGDOM

No.

CANADA

The granting of legal aid to one party does not result in the other party being exempted from advancing any of the costs of the proceedings.

FINLAND

No.

Question No. 26

Where the legally aided person loses the case, may the winning party be entitled to:

- a. recover his costs from the legally aided person;
- b. be reimbursed by the State or any other authority?

Replies

AUSTRIA

Where the legally aided person loses the case, the winning party is under the general rules concerning the refund of costs entitled to demand reimbursement of his costs by the legally aided person, but not by the government or any other authority.

BELGIUM

- a. and b. When the legally aided person loses the case, the winning party is entitled to recover his costs from the legally aided person but not to be reimbursed by the State or any other authority.

CYPRUS

The legally aided person is not as a rule liable to pay or entitled to receive any costs save where the trial judge otherwise orders.

DENMARK

- a. Yes.
- b. Normally not.

FRANCE

- a. Yes.
- b. -

FEDERAL REPUBLIC OF GERMANY

- a. Yes; the fact that legal aid has been granted does not affect the obligation to pay the costs incurred by the opponent (Section 117 of the ZPO). However, these costs do not comprise any court fees not yet paid by the opponent, because they shall not be collected (viz reply to Q 25, last sentence).
- b. No.

GREECE

- a. Yes, in the cases referred to under Q 22 (a) (i), (ii), and (iii) after a decision to terminate or withdraw legal aid has been taken by the competent court.
- b. No.

ICELAND

- a. Yes.
- b. No.

ITALY

- a. The winning party may request that the losing indigent party refund the costs, provided the latter has an ability to pay them.
- b. No.

LUXEMBOURG

Where the recipient of legal aid loses his case, the registry is required to refund the costs and fees incurred by the winning party.

NETHERLANDS

- a. Yes.
- b. No.

NORWAY

If the legally aided person loses the case, the court may order him to pay costs to the winning party according to the usual provisions. This expense is not covered under the terms of legal aid.

PORTUGAL

- a. and b. If the legally aided person loses the case, the winning party is entitled to recover from the losing party (and only from that party) any sums disbursed by him during the proceedings: stamps, trial costs, costs of documents, a sum in respect of procuradoria (see reply to Q.20).

It should be pointed out however that assets held by a legally aided person before the aid was granted cannot be seized.

SWEDEN

- a. Yes.
- b. No.

SWITZERLAND

- a. Yes, at federal level and in the majority of cantons.
- b. In some cantons, the provisions for court costs are reimbursed to the successful opposing party; two cantons also pay the party's costs (lawyers' costs).

TURKEY

The winning party may recover his costs from the legally aided person.

UNITED KINGDOM

- a. Yes; but the amount of costs he may be awarded is severely limited, because the legislation provides that the assisted person's liability for costs shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the means of the parties and their conduct in connection with the dispute. This means that the amount of costs an assisted person will be ordered to pay will often be very low or nil.
- b. Yes. Successful unassisted parties may be awarded costs out of the legal aid fund in certain circumstances. The legally aided person must normally have instituted the proceedings, which must have been finally determined in favour of the unassisted party and the latter must, irrespective of the legislation, have been entitled to an order for his costs. Before exercising its power to award costs out of the legal aid fund the court must consider what order, if any, should be made against the assisted person himself. In addition, the unassisted party must, if he seeks to recover the costs at first instance (as opposed to an appeal) show that he will suffer severe financial hardship unless an order is made and must, in every case, satisfy the court that, in all the circumstances, it is just and equitable that provision should be made out of the legal aid fund.

CANADA

- a. If the legally aided person loses the case the winning party in some jurisdictions may only attempt to recover his costs from the legally aided person.
- b. In other jurisdictions he may be entitled to recover his costs from the provincial legal aid plan. Decisions on this question are usually made by the appropriate legal aid committee, depending on the relevant legislation.

FINLAND

- a. If the party granted legal aid loses the case he is in the same position as any other losing party. In other words the winning party may be entitled to recover his costs from the aided party.
- b. The winning party cannot recover his costs from the State or any other authority.

Question No. 27

Where the legally aided person wins the case what costs are recoverable from the losing party?

Replies

AUSTRIA

Where the legally aided person wins the case, the amounts enumerated in Article 64, para 1, sub-para 1, of the Code of Civil Procedure and in respect of which that person is temporarily exempted from payment may be recovered immediately from the opposing party to the extent to which the costs of the lawsuit have been imposed on him or under a settlement accepted by him.

Even where the legally aided person wins but does not demand refund of costs, the court has to decide as to whether and to what extent the opposing party is bound to reimburse the amounts referred to in Article 64, para 1, sub-para 1 of the Code of Civil Procedure (Article 70, para 1, of that Code). The costs of the lawyer have to be refunded by the losing party as if the legally aided person had freely chosen his lawyer.

BELGIUM

When the opponent of the legally aided person is ordered to pay costs and expenses, the sums owed by the former are recovered by the Registrar:

- emoluments and fees of law officers and members of the attorney general's department, with the exception of one quarter of bailiffs' salaries;
- dues and fines which remain outstanding;
- sums advanced by the Registry and State Properties Administration (see Article 693, Judicial Code).

The fees of the legally aided person's lawyer cannot be charged to an opponent who has been ordered to pay costs, except with respect to the proceedings allowance (see Article 1022 Judicial Code) (eg proceedings at the Court of First Instance: between 3,000 and 4,000 BF; magistrate's court: between 500 and 1,500 BF).

CYPRUS

See reply to Q 26.

DENMARK

The State succeeds to the claim for costs.

FRANCE

Only the costs incurred by the opposing party, excluding lawyer's fees (costs advanced by the State are not recoverable).



FEDERAL REPUBLIC OF GERMANY

The fees and expenses of the court and the bailiff which the indigent party is temporarily exempted from paying on account of the fact that he has been granted legal aid are collected from the unsuccessful opponent in so far as the opponent is ordered to pay the costs of the proceedings (Section 123 of the ZPO). Also if counsel has been assigned to the indigent party, he can claim from the losing opponent the full remuneration of an attorney at law instructed by a fee-paying party (Section 124, para 1 of the ZPO). To the extent to which counsel has been or will be paid by the Treasury, the claim devolves on the Treasury (Section 130, para 1, first sentence, of the Federal Statute on Fees of Attorneys-at-Law).

GREECE

All the costs mentioned in Q 9 (a), (c), (d), and (e).

ICELAND

That is for the court to decide. It can be all of the costs, or a part of the costs or even none of it.

ITALY

All costs of the proceedings are to be debited to the party; counsel's fees may be requested by the counsel himself.

LUXEMBOURG

Cost of proceedings (clerk's fees, postage, witnesses' fees, newspaper announcements, remuneration of experts, procedural fines, stamp duty), with solicitor's and usher's fees.

NETHERLANDS

The lawyer of a legally aided person may recover his fee from the other party in the same way as the lawyer of a fee-paying client; this is less than the client owes him. If this is done, the lawyer of a legally aided person gets his fee twice.

NORWAY

If the legally aided person wins the case, the losing party may be ordered to pay costs to the public exchequer in accordance with the usual rules on liability for court costs in legal actions.

PORTUGAL

If a legally aided person wins his case, he is entitled to receive from the losing party the sums mentioned in Q 26.

SWEDEN

The States' cost of the legal aid are recovered from the losing party in the same way as the winning party would have been entitled to recover his costs if there had not been any legal aid.

SWITZERLAND

In this case the question of costs is settled as if there had been no legal aid.

TURKEY

All costs.

UNITED KINGDOM

Costs are recoverable from the losing party (assuming he is unassisted) in exactly the same way as in non-legally aided cases. (If both parties are legally aided the order that can be made against the losing party is limited.)

CANADA

When a legally aided person wins the case he may recover his costs from the losing party. In these instances he must pay these costs to the legal aid plan to reimburse it for costs paid out on his behalf.

FINLAND

If the opposing party loses the case he is ordered to pay the costs of the case to the State. In case the amount thus to be paid is deemed unfair, the court may waive the obligation to pay or reduce the sum of repayment.

If a communal legal advisor has acted as counsel for the aided person, the compensation (expenses and estimated fee) shall be ordered payable to the commune concerned.

The winning (legally aided) party is entitled to recover all his costs not covered by legal aid from the losing party.

When legal aid subject to payment of contribution has been granted, the winning (legally aided) party may recover from the losing party the sum he has been ordered to pay as contribution to the State.

Question No. 28

- a. If a person has been granted legal aid in proceedings which have been instituted in another State, is he entitled (automatically or under what conditions) to legal aid in your State for subsequent stages in the procedure (eg taking of evidence, recognition or enforcement of the foreign decision)?
- b. What is the effect of the legally assisted person only having been granted partial legal aid in the State where the proceedings were taken?

Replies

AUSTRIA

Under Austrian law, a party seeking legal aid may generally place on record with the court his plaint together with his application for legal aid. But this is only possible if the plaint is to be dealt with by a domestic court since the form of action is governed by the procedure applicable to the court.

In a number of agreements on legal aid concluded by Austria with countries not belonging to the Council of Europe an arrangement has been provided under which a party believing to have a right to legal aid may submit to the court of his place of residence a respective application for the proceeding which is to be instituted in the other country. That application must be accompanied by a statement of the facts. The application together with the statement of facts, is forwarded through official channels to the competent court in the other country. The latter court has to decide on the application and if it grants the application, it has to appoint for the party a gratuitous representative for filing the plaint.

A special arrangement is provided for the recovery of maintenance under the New York Convention, which was also ratified by Austria (Fed Law Gaz No. 316/1969).

BELGIUM

- a. If a person has been granted legal aid in proceedings which have been instituted in another State, he is entitled to legal aid in Belgium for subsequent stages in the procedure only where international conventions apply (e.g. Article 9 of the Hague Convention of 15 April 1958 on the recognition and enforcement of decisions relating to maintenance obligations in respect of children; Article 24 of the Hague Convention of 1 March 1954 relating to civil procedure; Article 44 of the Convention between member States of the European Economic Community on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27 September 1968).
- b. Same reply as for (a).

CYPRUS

In no case a person who has been granted legal aid in proceedings which have been instituted in another State, is entitled to legal aid in Cyprus, unless he files an application to that effect for legal aid in Cyprus under Order 8 of the Civil Procedure Rules.

DENMARK

- a. No.
- b. Not applicable.

FRANCE

- a. Yes, as provided in the reply to Q 1.
- b. The person must satisfy the conditions for the granting of legal aid in France.

FEDERAL REPUBLIC OF GERMANY

- a. According to Article 9, para 1 of the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations in respect of children (cf reply to Q 1 (c)), a party who has been granted legal aid in the judgment State enjoys it without further qualification also in the proceedings to enforce the decision in the Federal Republic of Germany. There are similar provisions in Article 16 of the Agreement between the Federal Republic of Germany and the Republic of Austria of 6 June 1959 on the reciprocal recognition and enforcement of judicial decisions, settlements, and authenticated documents in civil and commercial matters and in Article 15 of the Agreement of 30 August 1962 on the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters between the Federal Republic of Germany and the Netherlands. Similar provisions apply under Article 44 of the EEC Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

According to Article 24 of the Hague Convention of 1 March 1954 relating to civil procedure, if legal aid has been granted in the requesting State, then the service of documents and the taking of evidence in the requested State shall to a certain extent be exempt from the States' obligation to refund each other any costs incurred.

- b. This question has not been provided for by Statute.

GREECE

- a. No.
- b. Legal aid must be applied for in Greece (see Q 4).

ICELAND

- a. He could be granted legal aid for subsequent stages in the procedure, but it would not follow automatically, because the person concerned would have to fulfil the requirements of the Act on Legal Aid.
- b. None.

ITALY

- a. No.
- b. No.

LUXEMBOURG

- a. and b. Legal aid must in every instance be applied for in Luxembourg and can be granted only as provided for by Luxembourg law.

NETHERLANDS

- a. Not for taking evidence; applications for legal aid for recognition and enforcement of sentences are subject to the general conditions.
- b. The person concerned will not receive legal aid.

NORWAY

- a. Where whatever is to be carried out in this country can be considered as a separate legal action (for example, enforcement of a foreign judgement) legal aid may be granted for such an action. In principle it is therefore immaterial whether the legally aided person has been granted legal aid by the foreign State concerned in the preceding case abroad.
- b. Cf reply to (a) above.

PORTUGAL

- a. and b. If a person has been granted legal aid for proceedings instituted in another State it is necessary, in order to obtain legal aid in Portugal for subsequent stages of the same procedure, to apply to the Portuguese judge. This rule applies whether the aid is granted in toto or in part.

SWEDEN

Any person who wants legal aid in Sweden has to apply for it to the Legal Aid Board. It does not make any difference in principle whether he has been granted legal aid in another country for other stages or procedure.

SWITZERLAND

- a. None.
- b. -

TURKEY

Not automatically. Persons desiring legal aid must meet the conditions laid down in Article 465 of the Turkish Code of Civil Procedure, and the aid must be granted by a Turkish court.

UNITED KINGDOM

- a. No, but he may apply for legal aid in the normal way, if there are subsequent proceedings in the British courts.
- b. This is irrelevant.

CANADA

- a. A person would be eligible for legal aid for proceedings in most Canadian jurisdictions in such circumstances if he were resident in the province of Canada in which the subsequent stages in the procedure were being processed. He would also be eligible if a reciprocal agreement existed between the province in which he was resident and the province in which the proceedings were taking place.
- If he were not resident he might or might not be eligible for legal aid in the discretion of the appropriate local officials.
- b. Legal aid officials are given a discretion to consider such factors as they feel are relevant in making a decision whether or not to grant legal aid. The grant of partial legal aid in another State would be one factor which they might consider in making this decision.

FINLAND

- a. and b. Granting of legal aid abroad has no legal effect as such in Finland. The need for legal aid will be considered independently upon a new application according to Finnish law.

Question No. 29

- a. Is there at present any procedure for submitting a request for legal aid in another State through an authority in your country?
- b. If so, what is the procedure?

Replies

AUSTRIA

See reply to Q 28.

BELGIUM

Yes, in pursuance of Articles 20-23 of The Hague Convention of 1 March 1954 for countries having ratified that convention, or application of bilateral conventions (e.g. Agreement signed in Brussels on 25 April 1959 between the Belgian Government and the Government of the Federal Republic of Germany, to facilitate application of The Hague Convention relating to Civil Procedure, of 1 March 1954).

Incidentally, the same may be done in pursuance of the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance. In other cases diplomatic or consular channels are used.

CYPRUS

At present there is no procedure for submitting a request for legal aid in another State through an authority in Cyprus.

DENMARK

- a. No such formal procedure exists.
- b. -

FRANCE

The procedure in Articles 20-24 of the Hague Convention of 1 May 1954 and supplementary bilateral agreements to that convention. Bilateral conventions. These agreements provide only for establishing the probatory force of the certificate attesting inadequate financial resources.

FEDERAL REPUBLIC OF GERMANY

- a. Yes.
- b. Under Section 10 of the German Statute implementing the Hague Convention of 1 March 1954 every national of a Contracting State who in a foreign State wants to apply for legal aid to bring an action before the court of another Contracting State through the channel provided by Article 23 of the convention may file his application for legal aid with the local court (Amtsgericht) in whose district he has his habitual residence. The same applies to any person entitled to maintenance who resides in the Federal Republic of Germany when asserting maintenance claims under the UN Convention of 20 June 1956

on the recovery abroad of maintenance (Article 3, para 1 of the German Statute of 26 February 1959 implementing the convention). The applicant is assisted in drafting his petition. Transmitting agencies within the meaning of Article 2 of the UN Convention of 20 June 1956 are the Ministries of Justice of the Länder.

GREECE

Yes, under the New York Convention on the recovery abroad of maintenance. Receiving authority: Ministry of Justice; transmitting authority: Ministry of Foreign Affairs.

ICELAND

- a. Yes.
- b. Through diplomatic channels.

ITALY

- a. The Hague Convention on Legal Aid allows the transmission of applications for legal aid through diplomatic channels.
- b. The application has to be addressed to the Italian Ministry of Foreign Affairs which shall forward it to the Ministry of Foreign Affairs of the country of destination.

LUXEMBOURG

Yes, under the New York Convention on the recovery abroad of maintenance, the Luxembourg Ministry of Justice is the authority designated to recover maintenance awards made by Luxembourg court order against persons residing abroad. It may claim legal aid in such cases.

NETHERLANDS

- a. No.
- b. -

NORWAY

- a. An application for legal aid from a person in Norway to a foreign State in respect of court proceedings in that State may be forwarded through the Ministry of Justice. The Ministry of Justice transmits the application to the appropriate authority in the other State, if necessary, accompanied by a certificate stating that the applicant would be eligible for legal aid in a corresponding case in this country.
- b. In order that the above mentioned certificate may be granted, the applicant must furnish information concerning his financial position and the nature of the case etc as if the application were submitted to the Ministry of Justice.

PORTUGAL

- a. and b. There is no procedure in Portugal at present which makes it possible to lodge an application for legal aid in another State through the intermediary of the Portuguese authorities.

SWEDEN

Yes, under the rules of the New York Convention on the recovery abroad of maintenance. The Ministry of Foreign Affairs is the authority designated to handle these matters.

SWITZERLAND

- a. Only under the New York Convention on the recovery abroad of maintenance to which Switzerland is about to accede.
- b. -

TURKEY

- a. Yes.
- b. The procedure is as laid down in Article 23 of the Hague Convention relating to civil procedure, to which Turkey is a party.

UNITED KINGDOM

No specific procedure is laid down.

CANADA

In Canadian jurisdictions there does not, at present, appear to be any specified procedure for submitting a request for legal aid in another State through local authorities. The best procedure in such a case would appear to be to contact the appropriate provincial plan authorities.

FINLAND

- a. and b. Finland is a party to the convention relating to civil procedure, done at the Hague on 1 March 1954 and to the New York Convention on the recovery abroad of maintenance.

Question No. 30

Are there any provisions for the granting of legal aid or any other legal assistance to a person in your country for the purpose of legal proceedings in another State?

- a. By a lawyer in your own State?
- b. By a lawyer in the other State?

Replies

AUSTRIA

See reply to Q 28.

BELGIUM

There are no provisions other than those mentioned in the replies to Q.28 and Q.29.

CYPRUS

There are no provisions for the granting of legal aid or any other legal assistance to a person in Cyprus for the purpose of legal proceedings in another State.

DENMARK

No.

FRANCE

No.

FEDERAL REPUBLIC OF GERMANY

- a. and b. There are, at present, only the provisions mentioned in the reply to Q 29.

GREECE

See reply to Q 29.

ICELAND

- a. and b. There are no such provisions.

ITALY

No.

LUXEMBOURG

See reply to Q 29.

NETHERLANDS

- a. The normal provisions apply.
- b. This is not possible.

NORWAY

- a. and b. No.

PORTUGAL

- a. and b. There are no provisions in Portugal for the granting of legal aid of any type to anyone on Portuguese soil who wishes to institute legal proceedings in another State.

SWEDEN

If there are special reasons legal aid can be granted also for matters which include proceedings abroad. In such cases which are not frequent the aided person normally has got a counsel in Sweden who is corresponding with a colleague in the foreign country.

SWITZERLAND

The normal social assistance authorities would be competent in such cases.

TURKEY

No.

UNITED KINGDOM

No.

CANADA

At present in most Canadian provinces there do not appear to be any provisions which would allow the granting of legal aid or other legal assistance to persons for the purpose of legal proceedings in other States, although this might be done in the case of other Canadian provinces where reciprocal agreements exist.

FINLAND

- a. A person may be granted legal advice including assistance by a communal legal advisor (that is a lawyer) also when the case has to be handled abroad.
- b. No.

B. Legal aid for administrative matters

Question No. 31

Can legal aid be granted in your country for administrative matters other than those dealt with under Section A? In what circumstances?

Replies

AUSTRIA

1. To begin with, it should be noted that, as distinct from the procedure before civil and criminal courts, the Austrian Rules of Administrative Procedure do not include a provision requiring representation of a party by a lawyer in certain types of proceedings. For proceedings before administrative authorities representation by a lawyer is not compulsory either in the first or in the higher instances, though it is admissible (Article 10 of the General Administrative Procedure Act, Fed Law Gaz No. 172/1950). For this reason there is no essential need for the assignment, free of charge, of a representative in administrative proceedings such as is given in civil and criminal proceedings.

In certain cases deserving particular consideration from the social aspect the administrative rules provide that parties may be represented in administrative proceeding by the association representing their interests on the basis of either compulsory or voluntary membership (eg Article 92, para 3, of the War Victims' Pension Act of 1957, Fed Law Gaz No. 152, as amended). As a rule, membership of such an association implies representation free of charge, in coherent administrative proceedings.

In this connection mention should also be made of Article 105 (4) of the Statute governing workers representation, Arbeitsverfassungsgesetz, (Fed Law Gaz No. 22/1974) which provides for the body representing the worker's interests the status of a party on administrative proceedings concerning the termination of an employment.

The body representing the worker's interests (works council) takes proceedings against the notice to quit. As a result, no costs arise from the proceeding for the person concerned.

2. The costs of a proceeding before an administrative authority have, as a rule, to be borne by the party only if the official act is essentially in his private interest or requested by him. Such costs are collected in the form of charges as fixed under the scale of rates, in the form of refund of the authority's cash outlay, etc (Article 76 to 78 of the General Administrative Procedure Act). It is noted, however, that such costs as well as the costs of an administrative penal proceeding or a fine have to be collected only "insofar as this does not prejudice the necessary subsistence of the party involved or the persons for whom he is legally bound to provide maintenance" (Article 79 of the General Administrative Procedure Act; Article 14, Article 64, para 5, Administrative Penal Law of 1950; Article 2 of the Administrative Enforcement Act of 1950). Under the Legal Aid Act (Fed. Law Gaz. No. 569/1973) the first-cited rule has been formulated in a manner corresponding to Article 63, para. 1, of the Code of Civil Procedure so that a contribution to the cost of an administrative proceeding will not have to be paid if this would jeopardise a "plain living". As to the term "plain living", see the answer to Question 5.

3. Apart from this exemption of individuals from contributing toward the cost of an administrative proceeding, there exist a number of legal rules imposing for proceedings of social importance an obligation on the author to pay the costs, irrespective of the interest in, and the outcome of, the proceeding. Examples of such rules are: Articles 359 and 379 of the General Social Insurance Act of 1955 (Fed. Law Gaz. No. 89, as amended); Article 150 of the Statute governing workers representation of 1974; Article 23 of the Act concerning the employment of disabled persons of 1970 (Fed. Law Gaz. No. 22); Articles 5 to 10 of the Victims Welfare Act of 1947 (Fed. Law Gaz. No. 183 as amended); Article 312 of the Federal Tax Code (Fed. Law Gaz. No. 194/1961). All of these rules have the principle in common that the parties have personally to defray the costs accruing to them personally.

The present report skips the rules providing for respite or reduction of payments to be made to the authorities under substantive law (eg Art. 212 of the Federal Tax Code of 1961 which stipulates that respite of payment of a tax may be granted if current payment would involve "considerable hardship" for the taxpayer).

4. For proceedings before the Administrative Court and the Constitution Court representation by a lawyer is, as a rule, compulsory. It is noted that in both Administrative Court and Constitutional Court proceedings the legal aid rules of the Code of Civil Procedure are applicable (Article 61 of the Administrative Court Act, Fed. Law Gaz. No. 85/1953), with the six-week period for filing appeal under administrative proceedings commencing only at the date of the decision on the application for legal aid to be submitted to the Administrative Court (Article 26, para. 3, Administrative Court Act).

The legal aid rules contained in the Code of Civil Procedure as described in the replies to questions 1 to 30 (cf also E KININGER, Die wirtschaftliche Schwäche im österreichischen Zivilprozess, Österreichische Juristenzeitung 1976, p. 9-12) are also applicable in proceedings before arbitral tribunals of the social insurance scheme (Article 396 of the General Social Insurance Act of 1955 as amended by the Fed. Law Gaz. No. 23/1974).

5. At the time being, there is no general obligation for the authority to give legal advice to persons, but the legal title to information by the Federal Ministry competent as to subject matter as laid down in Article 3, para. 5, of the Federal Ministries Act of 1973 (Fed. Law Gaz. No. 389) is deemed to include also the giving of legal advice in a specific proceeding, and under Article 13, para. 3, of the General Administrative Procedure Act the authority is bound to instruct a person filing an application to remedy a formal defect within a certain period. As all administrative proceedings are governed by the principle of ex-officio action (Article 39, para. 2, General Administrative Procedure Act), the authority will have to take spontaneously all steps necessary to safeguard the rights of the parties in a specific proceedings, and consequently, it will also have to advise the parties on their rights.

An express obligation for authorities to provide legal aid to a party not represented by a lawyer is already now contained in Article 57 (3) of the Fiscal Penal Law, Fed. Law Gaz. No. 129/1958 as amended by Fed. Law Gaz. No. 335/1975.

"The fiscal penal authority, if so requested, shall give such defendants and persons affected by a possible confiscation or liable for pecuniary sanctions who are not versed in law and not represented by professional parties representatives the necessary oral advice concerning the procedural acts to be taken by them as well as a warning of the immediate legal consequences entailed by their acts or omissions."

BELGIUM

Legal aid proper cannot be granted for administrative matters other than those dealt with under Section A. Assistance by a lawyer, however, may be granted.

CYPRUS

Legal aid is granted only in court proceedings either before a civil court or an administrative court. There is no provision for legal aid unconnected with court proceedings.

DENMARK

In very few cases, where authorised by special Statute, legal aid may be granted for administrative matters.

FRANCE

No.

FEDERAL REPUBLIC OF GERMANY

In administrative proceedings outside court proceedings legal aid within the meaning of Chapter A of the questionnaire cannot be granted as a rule. However, according to the fees regulations of the Federation and the Länder it is possible to cancel or to remit fees or to grant respite for the payment of fees.

In proceedings for the grant of a patent the interested parties may, upon application, be granted legal aid not only before the Patent Court and the Federal Court of Justice but also before the patent office (Section 46 (a) of the Patent Act). The applicant must prove indigence and the matter must have sufficient prospect of success (Sections 46 (b), 46 (c) of the Patent Act). In proceedings for a revocation or the withdrawal of a patent a further condition is that the applicant must satisfy the administrative or judicial authority that he has an interest worthy of protection (Section 46 (d) of the Patent Act).

GREECE

No (see reply to Q. 3 (b)).

ICELAND

No.

ITALY

The Italian legal system provides no legal aid of any kind for administrative matters with the exception of legal aid envisaged by part A.

LUXEMBOURG

The only provision for legal aid unconnected with court proceedings is in the case of pre-marriage formalities, the procurement of extracts from civil status documents, the correction and registration of such documents, and guardianship matters.

NETHERLANDS

Yes, under the same circumstances.

NORWAY

Since we do not have a special administrative tribunal, the question of legal aid in administrative matters will mostly be relevant in proceedings before the ordinary courts of law, see (A) above. In addition we have a legal aid scheme in connection with administrative proceedings, in respect of cases concerning administrative decisions and appeals against such decisions, see (C) below.

PORTUGAL

Although the Legal Aid Act (7/70) makes provision for extending the grant of such aid in proceeding, before all types of court, the regulations concerning administrative matters have not yet been published.

In the labour courts, employees are represented by an agent of the public prosecutor's department, and do not have to pay legal costs. At present the opinion is being put forward that Act No. 7/70 should be applicable in the labour courts, which would make it possible to improve the situation of small and medium-sized firms suffering from the economic crisis.

SWEDEN

Yes, the Swedish legal aid system covers legal aid in all kinds of legal matters irrespective of whether that matter is to be dealt with by a court or by some other authority or no authority at all. The conditions are in principle the same. (See Mr Hellners' report p 3, Appendix VI to this document, pp. 197-198).

SWITZERLAND

To the extent that administrative proceedings are not in any case free, payment of, or provision for, costs may be waived under the same conditions described above. The right to legal aid (ie a lawyer paid for by the authorities) does not exist in all cantons.

TURKEY

Conditions for granting aid for administrative matters are as set out in answer to Section A.

UNITED KINGDOM

No. But in the United Kingdom the civil courts have jurisdiction in many administrative matters, as there are no separate superior administrative courts.

CANADA

Legal aid can be granted for administrative matters as set out in Q 3, usually in the discretion of legal aid offices.

FINLAND

According to the Act on Public Legal Aid, legal advice can be given in all kinds of legal matters irrespective of whether they develop into a case to be brought before a court of law or an administrative tribunal or other authority. No category of legal matters is excluded.



C. Legal advice outside court proceedings

(Legal advice may include oral advice or practical assistance in drawing up wills, contracts, writing letters or applications to public authorities etc.)

Question No. 32

What possibilities exist in your country for a person of modest means to obtain legal advice outside court proceedings?

Replies

AUSTRIA

Outside court proceedings there is the institution of the so-called "Amtstag", official information day, at district courts. Besides parties not represented by a lawyer may call at Courts of the First Instance and ask for legal guidance and, if necessary, apply at the same time for the granting of legal aid.

Apart from this, the Bar Councils have created the institution of "Preliminary Lawyers' Information Service". At the time being there exist such information centres in Vienna; at Stockerau for Lower Austria; at Linz for Upper Austria; at Innsbruck for Tyrol and in Salzburg. Further information centres are planned at Graz for Styria and at Klagenfurt for Carinthia. (Enclosed herewith are the "Richtlinien für die Erste anwaltliche Auskunft" (General Direction for the Preliminary Lawyers' Information Service) which were adopted by the board meeting of the Bar Council for Vienna, Lower Austria and Burgenland on 28 October, 1975. According to a report received from the Bar Council, these information centres are visited on every Saturday by about one hundred people seeking legal advice, which is provided, free of charge, by some ten lawyers.)

That legal advisory service has nothing to do with the legal aid system and is not paid for from public funds.

BELGIUM

The Advice and Protection Bureau, run by the Bar Council, is competent to provide such advice or to appoint a lawyer to do so.

Legal advice is sometimes provided in specific matters by certain authorities or associations: large families' association; trade unions; following the introduction of the new Rents Act, the Ministry of Economic Affairs has organised an information service on the new legislation, etc.

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CYPRUS

There is no provision regulating the obtaining of legal advice outside court proceedings. However, legal advice on any matter is usually given to persons of modest means by lawyers in private practice free of charge.

DENMARK

Legal advice is available in respect of numerous everyday problems. Cases in point are domestic law, law of wills and succession, non-contractual damages; purchase of chattels personal; lease of dwelling; terms of employment. Legal advice is provided for persons who need to complete applications for legal aid or to draw up writs of summons in minor cases.

FRANCE

Legal advice is given free of charge or on payment of a small contribution in law-court information bureaux (magistrates, lawyers), private "law shops" (lawyers), social welfare offices (town halls), trade union offices, etc.

FEDERAL REPUBLIC OF GERMANY

In addition to the advisory activities of some public authorities in certain fields (eg the finance offices, social insurance authorities) in the Länder there are various public legal advice services and services of the local attorneys' associations for the extra-judicial and pre-judicial legal advice of persons with a low income. Associations formed on a corporate or professional basis may give legal advice and assistance to their members within the framework of their responsibilities (trade unions, employers' federations, professional associations, tenants' associations) (Article 1 (7) of the Legal Advice Act).

GREECE

By virtue of its statutory powers, the Council of the Order of the Bar appoints a lawyer to provide unremunerated advice to persons whom the said Council regards as being indigent.

ICELAND

Legal advice scheme does not exist in Iceland outside court proceedings, except that the tax assessing authorities are obliged to help people fill out their tax report if they so request.

ITALY

No legal aid of any kind is provided by the Italian legal system outside court proceedings.

LUXEMBOURG

Under the terms of its Statute, the Bar is required to provide a free advisory service once per week for persons of modest means.

#### NETHERLANDS

There are many possibilities, the principal ones being given below:

1. Legal aid boards can either designate a lawyer or bailiff for this purpose, subject to the normal conditions, or give advice themselves. For a long time this had been an exception, but in the last two years the boards have started to do much more in this field. Special sessions are organised for the purpose, in different localities in the district. Recently some boards have started to employ one or more full-time non-practising lawyers or others for this purpose.
2. Trade unions advise their members and pay their lawyers in certain cases. So do large consumer associations and motoring associations.
3. Some political parties and other organisations (eg a broadcasting association and a women's association) have a private "ombudsman" to whom complaints may be addressed. The ombudsman of the broadcasting association has a large staff.
4. Municipal and other social workers advise on certain subjects and help to obtain legal advice in other cases. Some large cities have appointed an "ombudsman" for this kind of work.
5. In all towns with over 100,000 inhabitants and in some other places there are one or more "law shops", run privately or by universities. Their staff work under the supervision of young lawyers in private practice and/or university staff. The university law shops make use of law students who serve for terms of about 8 months each. Opening hours are mainly in the evening. Such law shops generally confine themselves to giving advice. In principle, they help everyone who comes in. In some cases, especially when proceedings seem necessary, they refer clients to the Legal Aid Board. The public only contribute to the administration expenses (at most Fl.10). See also Table IV (Appendix III to this document) which deals with the kind of cases handled by law shops.
6. After a separation or divorce decree, the court designates a notary public to draw up the deed of separation of goods, if needed. In legal aid cases the notary's service is free of charge. The President of the court may designate a notary public to draw up wills or other deeds free of charge (Holland has the "Latin" notary system), though this is seldom done, partly because drawing up wills and marriage contracts is not expensive (about Fl. 100).

In Amsterdam young qualified notaries awaiting appointment have started a weekly consulting hour free of charge. The idea is being copied in other towns.

#### NORWAY

Anyone with an income and capital assets under certain prescribed limits has a right to obtain legal advice free of charge from a lawyer in connection with a dispute or a problem outside court proceedings - ie free legal advice.

#### PORTUGAL

Legal consultations are arranged by the Bar, in the case of persons of modest means. The trade unions and professional associations also have legal advisers whom their members may consult.

If someone of reduced resources presents himself at court to ask for legal information, he may be given general information by the law officers and, should there be any question of his instituting proceedings, or defending himself against a charge, he may be directed to an agent of the public prosecutor's department, who will ask the judge to appoint suitable counsel. The furnishing of legal advice with a view to forthcoming or present proceedings may thus be said to come within the system of legal aid. Consultations outside this framework are among the voluntary services offered by the Bar Association, or by trade unions and private associations.

#### SWEDEN

The criterias for legal aid and advice outside court proceedings, are in principle the same as in court proceedings. Legal aid is not granted in some routine matters eg inventory of estates or deceased persons (see Mr Hellners' report p 6, Appendix VI to this document, p. 200).

#### SWITZERLAND

Many private organisations such as professional associations, trade unions, women's or tenants' associations etc maintain legal advisory services which give advice free or at a very low charge. These consultation services are often also available to non-members. They are partly subsidised by the cantons and local authorities.

Public legal consultation services exist in the towns. One such service was established in Zurich as early as 1917: the city council provide the premises and office staff. Members of the Zurich Bar Association take it in turn to provide free advice on certain days of the week. A similar office has recently been established by the Geneva Bar Association (cf the attached regulations, Appendix VII to this document).

#### TURKEY

This does not exist in Turkey.

#### UNITED KINGDOM

Under the legal advice and assistance scheme (introduced in England and Wales and in Scotland in 1973), a person of limited means may obtain from a solicitor and, if necessary, counsel, advice and assistance on matters involving English or Scots law as the case may be at little or no cost to himself.

Under the scheme the solicitor may give his client, as if he were a fee-paying client, help on any subject usually dealt with by a solicitor. This help includes, for example, giving advice, writing letters, drawing up documents and negotiating a settlement. It does not, however, normally cover taking any steps in the proceedings, on behalf of the client, since this is covered by legal aid. It is available for criminal and civil matters (including tribunal problems). There is a financial limit on the amount of help that may be given; a solicitor may not give more than £25 worth of advice and assistance without obtaining the approval of the Area Committee in the district in which the matter arose; in undefended divorce cases prior authority is not required for giving legal advice and assistance where the £25 limit is exceeded by up to £20.

Advice and assistance under the scheme are available to anyone whose weekly income (after deductions have been made for income tax and national insurance contributions and certain allowances made for dependents) does not

exceed £42, or who is in receipt of social security benefit and (in either case) whose disposable capital (that is savings which are easily realisable, after certain deductions have been made) does not exceed £300. The client is required to pay to his solicitor a contribution towards his costs if his net income exceeds £20 a week. The amount of the contribution is calculated on a sliding scale, starting at £4, for a disposable income of £20 to £21 and increasing to £33 for a disposable income of £42.

The scheme has not yet been introduced in Northern Ireland, where only legal advice is available under the legal aid system. Legislation is proposed to bring the full scheme into force in Northern Ireland.

#### CANADA

The provinces in Canada which provide legal aid also provide legal advice outside of court proceedings and practical assistance in drawing up of wills, contracts and writing letters. These services are available to people who are otherwise eligible for legal aid as outlined in Section A.

#### FINLAND

According to the Act on Public Legal Aid, legal advice can be given in all kinds of legal matters. Thus, it may be a question of drawing up a contract or a will, giving assistance in matters regarding taxation, writing applications to administrative authorities and so on.

Legal advice is available for persons (individuals) who cannot obtain adequate expert assistance in legal matters considering their income, assets, maintenance obligations, and other financial circumstances. Legal advice may be granted cost-free or subject to contribution.

Nationals and aliens are treated in the same manner.

The granting of legal advice is decided upon by the communal legal advisor (see reply to Q 39). If he rejects the application for legal advice or if he is of the opinion that legal advice should be subject to contribution, the matter must on request of the applicant be referred to the Legal Aid Board for decision.

The Act on Legal Aid in Court Proceedings referred to in Section A does not apply to legal advice outside court proceedings.

#### Question No. 33

If possibilities exist for such legal advice by whom are the services rendered:

- a. State or local government legal aid offices or other authorities as part of their normal duties?
- b. lawyers in private practice?
- c. professional organisations of lawyers?
- d. other organisations?

#### Replies

#### AUSTRIA

See reply to Q 32.

#### BELGIUM

See reply to Q 32.

#### CYPRUS

See reply to Q 32.

#### DENMARK

In the metropolitan area legal advice is provided by a private organisation which is subsidised by public funds. The advice is given free of charge by law students and graduate lawyers.

Outside Copenhagen legal advice is provided by lawyers in private practice. A very modest amount is paid for the counselling, of which 75 per cent is paid by the State while the client pays the balance.

#### FRANCE

See reply to Q 32.

#### FEDERAL REPUBLIC OF GERMANY

- a.-d. Public legal advice offices on a statutory basis have been established in Hamburg and Bremen. In addition, in most of the Länder upon the orders of the governments of the Länder further legal advice offices have been opened in order to find the most expedient form of extra-judicial legal advice (cf reply to Q 43). Some of these offices are operated by public authorities, but in some other cases attorneys at law have been entrusted with this sort of legal advice. Likewise, in many places the public associations of attorneys at law maintain legal advice bureaux (see also the reply to Q 32).

#### GREECE

ICELAND

See reply to Q 32.

ITALY

See reply to Q 32.

LUXEMBOURG

See reply to Q 32.

NETHERLANDS

- a. See reply to Q 32, numbers 1 and 4.
- b. See reply to Q 32, numbers 1 and 6.
- c. No.
- d. See reply to Q 32, numbers 2, 3 and 5.

NORWAY

- a. In Oslo and the county of Akershus legal advice is given free by a public legal aid office. (In addition all public authorities are to a certain extent bound to give information and guidance under the Act of 10 February 1967, Article 11.)
- b. Yes.
- c. No.
- d. Some private organisations grant legal aid to their members through lawyers employed by the organisation.

PORTUGAL

See reply to Q 32.

SWEDEN

- a. and b. By lawyers at State legal aid offices as well as by lawyers in private practice.

SWITZERLAND

See reply to Q 32.

TURKEY

See reply to Q 32.

UNITED KINGDOM

The services are rendered primarily by lawyers in private practice, and also by lawyers employed in law centres.

CANADA

The organisation delivering the advice outlined in the reply to Q 32 is the legal aid agency of the individual province. Legal advice is given by either lawyers in private practice or by salaried lawyers employed by neighbourhood legal centres in areas where these exist.

FINLAND

- a.-d. Legal advice is provided by communal legal aid offices (for a more detailed description, see reply to Q 39).

Question No. 34

Does the rendering of legal advice form part of a general legal aid scheme or is it provided in any other way?

Replies

AUSTRIA

See reply to Q 32.

BELGIUM

The Advice and Protection Bureau operates as part of the general legal aid scheme. Legal advice provided in any other way does not form part of a general legal aid scheme.

CYPRUS

The rendering of legal advice does not form part of a general legal aid scheme.

DENMARK

Outside Copenhagen legal advice is provided subject to an executive order given by the Ministry of Justice.

FRANCE

The rendering of legal advice does not form part of a general legal aid scheme.

FEDERAL REPUBLIC OF GERMANY

This giving of legal advice outside judicial proceedings is not part of the general legal aid scheme applicable all over the Federal Republic of Germany but at present is based on measures taken by the Länder and various private organisations (cf replies to Q 32, Q 33, and Q 43).

GREECE

See reply to Q 32.

ICELAND

See reply to Q 32.

ITALY

See reply to Q 32.

LUXEMBOURG

Such advice does not properly form part of the legal aid scheme, but is a service traditionally provided by barristers.

NETHERLANDS

Only the services referred to in the reply to Q 32 numbers 1 and 6 form part of the general legal aid scheme.

NORWAY

Legal advice comes in under the public legal aid scheme.

PORTUGAL

See reply to Q 32.

SWEDEN

The rendering of this legal aid and advice is a part of the general legal aid scheme.

SWITZERLAND

There is no general legal aid scheme.

TURKEY

See reply to Q 32.

UNITED KINGDOM

The legal service and assistance scheme is administered by the Law Societies as is the legal aid scheme, but the machinery for obtaining advice and assistance and for calculating whether the client is eligible is different, and the scheme is governed by separate statutory provisions and regulations.

CANADA

The rendering of legal advice forms part of the general legal aid scheme.

FINLAND

See reply to Q 39.

Question No. 35

In case of legal advice being given by public authorities or by private lawyers remunerated out of public funds, in what way does the legal advice scheme differ from the legal aid system dealt with under Sections A and B above?

Replies

AUSTRIA

See reply to Q 32.

BELGIUM

This question does not apply in the case of Belgium.

CYPRUS

Not applicable as no legal advice is being given by public authorities or by private lawyers remunerated out of public funds.

DENMARK

The legal advice scheme differs from the legal aid scheme in a number of ways. Persons meeting the financial requirements are entitled to receive legal advice, without prior application. The financial requirements are also considerably more stringent for legal advice than for legal aid. To receive legal aid a person must not today have an annual taxable income above Dkr 25,000 (approx £2,000 or FF 17,985).

The fee for legal advice is also very modest and entirely uniform regardless of the scope of the case.

FRANCE

FEDERAL REPUBLIC OF GERMANY

The activity is mostly limited to impartially giving advice and legal information. Sometimes, practical help is given, such as by drawing up letters. However, applicants are not represented before the courts.

GREECE

See reply to Q 32.

ICELAND

See reply to Q 32.

ITALY

LUXEMBOURG

This service differs from the legal aid scheme proper in that advice may be sought without reference to any legal proceedings or action. Legal inquiries by interested persons are answered free of charge by barristers providing the service in rotation (in practice young barristers and trainees).

NETHERLANDS

In no way.

NORWAY

The difference between legal aid and legal advice lies principally in the nature of the service rendered: legal aid covers court costs and lawyer's fees in proceedings before a court of law, while legal advice covers expenses for a lawyer's services in giving advice and assistance in matters outside court proceedings. In addition different criteria are applicable in respect of legal aid and legal advice, in that legal advice is only provided where clearly defined financial criteria are fulfilled.

PORTUGAL

See reply to Q 32.

SWEDEN

As this aid and advice is a part of the scheme there are no differences.

SWITZERLAND

TURKEY

See reply to Q 32.

UNITED KINGDOM

Under the advice and assistance scheme, a client fills in at the solicitor's office a form outlining his means and the solicitor calculates whether he is eligible and what contribution he should pay. The solicitor subsequently claims his expenses, less any contribution payable by the client or costs recovered from the client's opponent, from the Law Societies, which pay them out of the legal aid fund. Although a legal aid certificate may cover preliminary advice and assistance, the advice and assistance scheme cannot, in general, cover any steps in proceedings or representation in court.

CANADA

In most Canadian provinces the legal advice scheme is an integrated part of the provincial legal aid plan.

FINLAND

Legal aid applies in court proceedings only (see Q 3). Assistance is given by counsel appointed by the court in each case (an attorney, a lawyer or any other person competent of handling the case). Legal aid is a State activity and financed directly out of State funds.

Legal advice may be granted in all legal matters without any limitations. Assistance is given by a communal legal advisor only. Legal advice is a communal activity financed partly by the communes and partly by the central government.

The two systems are linked in the following way: a person having a legal problem is granted legal advice by the communal legal aid office in the commune of residence. Later on it proves to be necessary to commence proceedings in the case. The court may then grant the person legal aid and appoint the communal legal advisor as counsel for him. The party will hereby be absolved from all court costs (see reply to Q 9). If the opposing party loses the case, he will be ordered to pay counsel's fee and expenses to the commune concerned (see reply to Q 27).

D. The administration of legal aid and legal advice scheme

Question No. 36

How are the various systems of (a) legal aid and (b) legal advice financed in your country?

Replies

AUSTRIA

The Federal Government has to pay to the Austrian Federation of Bar Councils a reasonable lump sum compensation in respect of the services of the lawyers especially assigned under the legal aid scheme who under procedural rules would otherwise not be entitled to a fee, such compensation being payable annually not later than on 30 September for the current calendar year. At the time when the Federal Act of 8 November 1973, amending the Lawyers' Statute, Fed Law Gaz No. 570, entered into force, an annual lump sum compensation of 32 million schillings was deemed reasonable (Article 47 of the Lawyers' Statute). The number of lawyers so assigned in 1974 was about 15% up on that assumed under the Government Bill in 1973. For 1974 the lump sum compensation payable for the services of lawyers appointed pursuant to Article 45 of the Lawyers' Statute was fixed at 36.8 million schillings by the Regulation of the Federal Ministry of Justice of 26 November 1975, Fed Law Gaz No. 583.

BELGIUM

- . Legal aid proper is financed by the State. The activities of Advice and Protection Bureaux are not financed by the State.

CYPRUS

Not applicable. Strictly speaking there are no legal aid or legal advice schemes in Cyprus. The only provision for legal aid is under Order 8 of the Civil Procedure Rules referred to hereinabove.

DENMARK

Legal aid as well as legal advice are financed by the Treasury.

FRANCE

- a. By the State (out of public funds).
- b. Legal advice is not financed out of public funds.

FEDERAL REPUBLIC OF GERMANY

The costs of judicial legal aid are wholly, those of legal advice by public legal advice offices for the greater part financed with public means. Legal advice is sometimes given against a small fee.

GREECE

ICELAND

- a. Legal aid is financed entirely by the State.

ITALY

- a. Legal aid in the Italian legal system is, as a rule, at the government's expense; however, the cost of the proceedings and counsel's fees are debited as from the foregoing, in case the State may recover such expenses from the losing party, provided it has an ability to pay.

LUXEMBOURG

Legal aid within the narrow framework outlined above is financed by the State, whereas legal advice outside court proceedings is provided by the Bar.

NETHERLANDS

The government pays the costs of the legal aid and advice scheme. In case of the reduced rate system mentioned in the reply to Q 11 the lawyer and the client each pay half the normal fee. Some law shops receive a subsidy, either from a university or from the State or municipality, or from both. Students and lawyers advising in law shops do so on a voluntary basis. The persons referred to in the reply under Q 32, numbers 2, 3 and 4 are paid by their employers. Notary's services referred to in the reply to Q 32 number 6 are not remunerated.

NORWAY

Legal aid expenditures are covered by the fiscal budget. Legal advice expenditures are divided on a 50-50 basis between the central government and county administrations.

PORTUGAL

The legal aid scheme is run by the judges and financed by the State with the help of lawyers, who are affiliated to it by their membership of the Bar.

The various legal advice schemes are administered as follows:

Where proceedings are to be instituted or defence has to be assured in a trial in progress, the litigant may consult an agent of the public prosecutor's department (who usually confers himself to giving general guidance). Advice may also be sought from a lawyer nominated by the judge at the request of the litigant or of the agent of the public prosecutor's department;

In any other case, advice is furnished by the consultancy services financed and administered by the Bar, the trades unions or professional associations.

SWEDEN

SWITZERLAND

- a. Legal aid is financed by the treasury of the canton where the case is tried, or by the Federal Treasury in the case of proceedings before federal authorities.
- b. See reply to Q 32.

TURKEY

Legal aid is financed by the Ministry of Justice.

UNITED KINGDOM

The schemes are financed in part by the Exchequer out of moneys voted annually by parliament, partly by contributions from persons receiving legal aid, advice or assistance, and partly by costs and damages payable by unsuccessful opponents of assisted persons. The Law Society is responsible for maintaining the legal aid fund, from which expenses are met and into which receipts in connection with the running of the schemes are paid.

CANADA

Civil legal aid and legal advice are funded by the various provincial governments. The Federal Government makes a grant to assist the provinces in providing criminal legal aid services. This grant covers 90% of the costs of criminal legal aid to a maximum of 50 c per capita. It is probable that this maximum will be increased to 75 c per capita in the near future. A sample copy of a federal-provincial agreement is submitted. Some financial support for the provision of civil legal aid services is also provided by Law Foundations in the various provinces who utilise revenue from the interest on lawyers' trust accounts to support legal education, libraries and legal aid.

FINLAND

The costs of legal aid in court proceedings are met from central government funds. The costs of legal advice according to the Act on Public Legal Aid are born by the commune or communes, if several communes are maintaining the office, but the State pays, depending on the economic status of the commune or communes, 50-95% of the costs of these activities.



Question No. 37

Approximately what proportion of the population in your country is eligible:

- a. for legal aid:
  - i. free of charge;
  - ii. partially granted (eg subject to contribution);
- b. for legal advice:
  - i. free of charge;
  - ii. subject to contribution?

Replies

AUSTRIA

Statistical data on the proportion of the population eligible for legal aid do not exist. The giving of legal advice within the framework of the Preliminary Lawyers' Information Service is generally not subject to specific income limits. Experience has shown, however, that legal aid is most frequently granted in maintenance cases and for the enforcement of damages for pain and suffering especially after traffic accidents as these cases are likely to involve considerable costs of experts and representatives and high court charges. Similarly legal aid is frequently applied for in paternity cases because of the high cost of experts.

BELGIUM

- a., b. It is not possible to answer this question as no scale is applied in Belgium.

CYPRUS

- a. A very limited number of persons in Cyprus are eligible for legal aid due to the financial limits below which a person is eligible for legal aid.
- b. Not applicable. There is no legal advice scheme in Cyprus.

DENMARK

It should be noted that legal aid is never made conditional on a contribution to costs while in the case of legal advice the client must always contribute 25 per cent of the costs.

There are no available statistics on the proportion of the population which is entitled to legal aid and legal advice. However, for the former the figure is estimated at 80 per cent whereas for the latter it is presumably below 20 per cent.

FRANCE

- a. Not known.
- b. Not known.

FEDERAL REPUBLIC OF GERMANY

- a. It is impossible to estimate what proportion of the population would be granted legal aid wholly or in part in case of a legal dispute. Whether the requirements for granting legal aid are fulfilled inter alia depends on the amount of the accruing court fees and counsel's fees which, in turn, depend on the value in dispute determined by the applications of the parties. Any delimitation, such as by saying that the part of the population earning less than a certain low income if entitled to legal aid, cannot be made.
- b. Information in respect of the entire territory of the Federal Republic of Germany cannot be given, because there is not yet a legal advice scheme free of charge or at reduced fees everywhere and the existing legal advice offices make the granting of legal advice dependent on different conditions of income and means. In the areas where legal advice offices have been established, between 1% and 3.3% of the population have applied to the legal advice service. Often applicants are charged a cost contribution of between DM 5 to DM 15, which, however may be reduced or remitted. More precise statements on the proportion of legal advice free of charge or at reduced charges are not available.

GREECE

- a. and b. -

ICELAND

- a.
  - i. No statistical survey has been undertaken on this.
  - ii. It is incompatible with the provisions on legal aid to grant it partially.
- b. i., ii. Does not apply.

ITALY

- a. Nearly 1% of the Italian people avail themselves of legal aid.
- b. See reply to Q 32.

LUXEMBOURG

The Ministry of Justice has no figures on these two points.

NETHERLANDS

- a. and b. No reliable figures are available. The percentage has been roughly estimated at 75. Depending on the district, between 0% and 40% of the applications granted are subject to the contribution referred to in the reply to Q 10.

Possibly about 5% of the population can apply for the "reduced rate", which is rarely used.

NORWAY

- a. Since it is not only economic criteria which determine whether legal aid shall be granted, it is not possible to indicate what proportion of the population comes in under the scheme.
- b. Approximately 1/4 of the total number of tax payers had an income and capital assets under the limit set for granting legal advice.

PORTUGAL

We have no statistics showing, even approximately, the proportion of the population of Portugal entitled to benefit:

- a. From total or partial free legal aid,
- b. Legal advice, either free or subject to a contribution.

It can be assumed however that half of the population is entitled to benefit from one of the schemes of legal advice or aid.

SWEDEN

We have no figures about those proportions available. (But see Mr Hellners' report p 14, Appendix VI to this document, p. 205).

SWITZERLAND

This proportion of the population is difficult to determine, for the grant of legal aid depends not only on the income and capital of the applicant, but also on the costs involved in the proceedings.

TURKEY

It is difficult to give an exact figure at present.

UNITED KINGDOM

It is thought that approximately half the population are eligible on disposable income grounds for legal aid. It is not possible to distinguish between those who are eligible for free legal aid and those who are eligible on payment of a contribution. Figures are not available as to the proportion of the population eligible for legal advice, but the percentage is approximately the same.

CANADA

Detailed statistics on the proportion of the population eligible for legal aid are not available; hence it is not possible to provide a direct answer to this question. Some provinces have made rough estimates of the proportion of their population eligible for legal aid. The Province of Quebec has estimated that one third of its population would be eligible.

On a nationwide basis it could be argued that the percentage of people eligible for legal aid could be roughly equated to those defined as low

In 1971, low income was delineated by the following income cut-offs:

Family size

one	\$ 2,013
two	3,355
three	4,026
four	4,697
five or more	5,368

Within this definition, 15.9% of all families and 37.6% of all individuals in Canada were low income. In this classification, individuals were not included in the family category.

FINLAND

No reliable figures are available.

Question No. 38

For what types of cases is (a) legal aid and (b) legal advice most commonly given?

Replies

AUSTRIA

See reply to Q 37.

BELGIUM

Family law, divorce, maintenance, rents. An interesting point to note is that many lawyers are appointed to provide aid in criminal matters.

CYPRUS

No statistics are kept.

DENMARK

No definitive data are available although the categories of cases appear to be extremely wide-ranging.

FRANCE

- a. Family matters (divorce, judicial separation, maintenance allowances, custody of children) and road accident cases. Total, about 90% of cases.
- b. Family matters, Labour law.

FEDERAL REPUBLIC OF GERMANY

- a. Cases for which legal aid is most often given concern legal disputes about maintenance, divorce proceedings, affiliation cases and contents of legitimacy of children.

- b. Legal advice is most often given in the following fields of law:

Family law (including maintenance law)	- approx 25%
tenancy law	- approx 15%
other fields of the law of obligations	- approx 18%
the law of inheritance	- approx 6%
labour law	- approx 6%
criminal law	- approx 8%

The proportion of the different fields of law varies regionally. The share of private law amounts to more than 80%.

GREECE

- a. and -
- b.

ICELAND

- a. Injury to person cases.
- b. Does not apply.

ITALY

- a. Legal aid is most frequently granted (to indigent persons) in succession cases of property partition, recognition of an heir or a legatee's rights, action for recovery of property, acknowledgement of credits and matters relating to usufruct or to life annuities.

LUXEMBOURG

The Ministry of Justice has no precise information. The most that can be said is that legal aid is most often applied for in divorce cases.

NETHERLANDS

Family law (mainly divorce and maintenance cases), landlord and tenant, labour law, administrative law, and consumer disputes. This applies both to legal aid and to advice, but family law cases usually require court proceedings. See also Table IV (Appendix III to this document).

NORWAY

- a. Legal aid in court proceedings is principally given for matrimonial cases and for actions in tort.
- b. Legal advice is principally given in matters involving matrimonial relationships and in questions relating to inheritance and probate.

PORTUGAL

Legal aid is chiefly requested for family problems (filiation, divorce, legal separation) and rent. Legal advice is most frequently sought in similar cases and on contractual matters and labour law.

SWEDEN

- a. and b. As the Swedish scheme includes both legal aid and advice it is not possible to distinguish between aid and advice. More than half of the matters are divorce cases and an additional 10-15% are other kinds of family matters. Cases about damage cover about 10% of the total amount. (See Mr Hellners' report p 14-15, Appendix VI to this document, pp. 205-206).

SWITZERLAND

TURKEY

Legal aid is most commonly given in real property cases.

UNITED KINGDOM

By far the largest number of legal aid certificates (approximately 87% in England and Wales) are granted for matrimonial causes. A ten per cent sample survey recently carried out in England and Wales indicates that legal advice is also most commonly given in matrimonial cases (in approximately 59% of cases).

CANADA

Legal aid is most commonly given for divorce, separation, custody and other family law matters.

The only other area which comprises a significant proportion of civil legal aid matters is the consumer and debt area. A detailed breakdown of the categories of civil legal aid matters is provided in the annual reports of provincial legal aid plans.

FINLAND

- a. - Matrimonial matters, especially divorces
  - Room and house rental (tenancy) matters
  - Wages payable to workers
  - Property damage
- b. - Matrimonial matters, especially divorces
  - Matters concerning the estate of a deceased
  - Matters relating to real estate.

The activities of the communal legal aid offices consist of:

- giving (oral) advice, about 40%
- legal aid in court proceedings, about 20%
- other practical assistance, about 40%

Question No. 39

If public legal aid offices are set up in your country, please describe if possible:

- a. How they are organised;
- b. what are the qualifications and experience of the staff;
- c. how the salaries of their lawyers compare with the income of lawyers in private practice;
- d. are there any difficulties in recruiting and retaining lawyers?

Replies

AUSTRIA

Public legal aid offices do not exist as special legal institutions; legal aid is provided within the framework of general jurisdiction.

BELGIUM

With regard to legal aid proper, reference should be made to the reply to Q.4 and with regard to legal advice to the reply to Q.32.

CYPRUS

No public legal aid offices are set up in Cyprus.

DENMARK

There are no public legal aid offices in Denmark.

FRANCE

- a. Legal aid bureaux are attached to district courts ("tribunaux de grande instance"), courts of appeal, the Court of Cassation, administrative courts, the Conseil d'Etat and the Jurisdictional Court. There is a Central Legal Aid Bureau ("Bureau Supérieur d'Aide Judiciaire") at the Ministry of Justice.
- b. An equal number of court officials and governmental representatives (fiscal and social), presided over by a magistrate.
- c. Members of a legal aid bureau are not remunerated except for the Chairman and substitute Chairman having the status of honorary magistrate, solicitor (avoué) or lawyer (avocat), who are paid a small fee.
- d. In general, no; but there are cases of local difficulty.

FEDERAL REPUBLIC OF GERMANY

- a.-d. Not applicable, as far as judicial legal aid is meant (viz reply to Q 15).

As regards the organisation of legal advice offices the following examples may be stated:

In the legal advice office in Hamburg there work in addition to the head officer and 10 full-time members about 250 active or retired members of the "higher" and "elevated" justice service as well as some attorneys at law who, if possible, should have some experience in the field of welfare and economic activities. For resorting to these services applicants are charged fees in accordance with a special tariff. The persons giving the information receive only an allowance for expenses.

The public legal advice and settlement office of the city of Lübeck is headed by the head of the legal division in the social affairs department. The full-time staff consists of only one employee. On an honorary basis there are three retired judges who receive an allowance for expenses and some attorneys at law who get no allowance.

In the legal information offices of Berlin (West) advice is given by full-time civil servants having the qualification for judicial office. No fees are charged.

No decision has yet been made on the organisation of the projected legal advice offices (cf reply to Q 43).

#### GREECE

a.-d. -

#### ICELAND

a.-d. Does not apply.

#### ITALY

See reply to Q 32.

#### LUXEMBOURG

Not applicable.

#### NETHERLANDS

- a. There is a Legal Aid Board in each of the 19 District Court districts. On the boards are several practising lawyers, one or two bailiffs and sometimes social workers.

Recently these boards have co-operated with the legal aid boards dealing with criminal cases and with others in legal aid centres. At present there are centres in the three main cities only. The centres are registered as foundations (stichtingen). About half the members of their boards are practising lawyers, the others being ushers, notaries public, and, depending on the district, social workers, directors of social work agencies and representatives of trade unions, law shops and the like.

- b. Legal Aid Boards do not as a rule have permanent staff. The secretaries

The newly set up legal aid centres have small staffs of (young) non-practising lawyers and persons with experience of work in the office of court clerks or lawyers. They do a great deal of the advisory work.

- c. The members of the Legal Aid Boards receive only an attendance fee of fl 75 per session.

The salaries of the staff of the new legal aid centres are comparable to the salaries they would earn in private practice.

- d. No.

#### NORWAY

Only one public legal aid office has been set up, namely in the Oslo district. The office is administered by the Oslo Municipality, which receives a refund from the State for part of its expenses. The office provides both legal aid and legal advice through permanently employed jurists. Some of these are licensed advocates (lawyers). The jurists are paid according to the normal (municipal) salary scale. This salary is lower than the income which a lawyer may usually expect to derive from private practice. The office is, however, not particularly encumbered by recruiting problems.

#### PORTUGAL

- a.-d. There are no public legal aid offices in Portugal since the system introduced by Act No. 7/70 of 9 June 1970 was adopted.

#### SWEDEN

- a. Very similar to a private lawyer's office.
- b. The same as the qualifications of the staff of private lawyer's office.
- c. It is difficult to give an exact answer as the income of lawyers in private practice vary considerably. But, very roughly, perhaps you can say that lawyers at public law offices have about the same salary as the average lawyer with a private practice, if you also see to such benefits as pension etc.
- d. No.

For more information on public legal aid offices see Mr Hellners' report p 11-12 (Appendix VI to this document, pp. 203-204).

#### SWITZERLAND

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#### TURKEY

These do not exist.

UNITED KINGDOM

- a. There are a number of independent law centres which have been set up by private lawyers with financial assistance from central or local government in deprived areas.
- b. Each centre normally has at least two qualified lawyers, most of whom are fairly young members of the profession.
- c. In most law centres, the salaries are notably lower than in private practice.
- d. Law centres experience few difficulties in recruiting young members of the profession. However, more experienced lawyers generally do not apply for posts in law centres.

CANADA

- a. Public legal aid offices have been set up in Canada in the provinces of Quebec, Manitoba, Saskatchewan and British Columbia. They employ staff lawyers and are established by a central legal aid authority in each province which pays the salaries and other operating expenses of each office. These offices utilise full-time salaried lawyers to provide legal aid services. A more comprehensive description of the organisation of these offices is contained in the booklet, "The Delivery of Legal Aid Services in Canada".

In most of the other provinces legal aid is provided by lawyers in private practice. The individual usually makes his application in these provinces through an individual lawyer who maintains an office in the relevant jurisdiction who is designated as area director for the legal aid plan. In these provinces the area director is usually responsible to the provincial director of the legal aid plan.

- b., c. and d. Where the plans use salaried lawyers in neighbourhood legal aid offices to provide legal aid, usually only fully qualified lawyers provide legal services. In such cases the salaries of lawyers are usually somewhat lower than the income of lawyers in private practice although they may be comparable during the first few years. The salaries paid to lawyers employed by provincial plans are comparable to those paid by government.

Many of the provincial legal aid plans have been having difficulty in recruiting lawyers for their clinics, particularly experienced lawyers. There have also been considerable problems involved in retaining experienced staff.

FINLAND

- a. According to the Act on Public Legal Aid a commune or several communes together can set up a communal legal aid office. The maintaining of communal public legal aid is not an obligation of the commune, but when an office meeting the requirements of the Act has been set up, the State pays, depending on the economic status of the commune or communes, 50-95% of the costs of the activities. The Act was passed in 1973 and a network of communal legal aid offices is developing.

At the moment (June 1977) there are 148 legal aid offices in operation and 280 communes are taking part in the activity (the figure represents about 60% of all communes). The setting up of 36 legal aid offices covering 50 communes is pending at the moment.

In a communal legal aid office there are one or several public legal advisors, who must be trained lawyers (see Q 39 (b) below). Their salaries are paid by the commune. According to the Act the legal advisor shall be subjected to the supervision of the Finnish Bar Association. The legal advisor may not carry out an attorney's tasks for his own benefit, not be a shareholder, owner, part-owner or partner in a company or other body practising such activity. He may not hold other permanent remunerative employment that would disturb his duties and that can be declined.

Legal aid activity in a commune shall be guided and supervised by a legal aid board. If several communes carry out public legal aid activity together, they may agree to the election to the board of members from different communes. The communal legal aid board is elected by the communal council. The communal council shall approve guiding regulations for the legal aid board and these shall be submitted to the Ministry of Justice for confirmation. General supervision of public legal aid activity shall be the responsibility of the Ministry of Justice.

- b. A suitable person holding the degree of candidate of jurisprudence or who has previously obtained an equivalent degree and who has sufficient experience in acting as an attorney or in performing the tasks of a judge may be chosen for the post of legal advisor.
- c. The salaries of the lawyers employed at the communal legal aid offices are on an average lower than those of lawyers in private practice.
- d. There have been some difficulties in recruiting lawyers, especially lawyers with experience to the communal legal aid offices, partly because of the present level of salaries. The government pays its share of the legal aid office costs only, if the salaries of the legal advisors do not exceed a certain limit.

Question No. 40

What action is taken and by whom:

- a. to publicise the availability of legal aid and advice;
- b. to encourage the public to avail themselves thereof?

Replies

AUSTRIA

On the occasion of the introduction of the "legal aid scheme" the opinion was expressed by both the administration and the public, especially the mass media, that this would facilitate the assertion of rights. The Bar Councils publicised similarly the gratuitous "Preliminary Lawyers' Information Service".

The reform of the legal aid system, according to the inquiries made by the Federal Ministry of Justice, has proved a great success. Especially the spirit of co-operation with the people seeking assertion of their rights implied by that system as well as the simplification and the provision of a possibility to grant partial legal aid have offered considerable facilities. The implementation of the Legal Aid Act has, from the beginning, not met with any difficulties despite the additional burden which it involves for law courts.

BELGIUM

There is no organised information on the existence of advice bureaux. The press, radio and television occasionally provide relevant information in specific subjects. Some Bar Associations have taken steps for consulting hours to be published in the press.

CYPRUS

Practically no action is taken to publicise the availability of legal aid and advice or to encourage the public to avail themselves thereof.

DENMARK

The administrative offices of the courts publish a list annually of lawyers providing legal advice. Applicants may also receive this information directly from the said offices.

FRANCE

- a., b. The press, social services, public prosecutor's office, reception offices of courts, town halls and police stations.

FEDERAL REPUBLIC OF GERMANY

- a., b. It may be supposed that legal aid as an institution, which has been in existence since the introduction of the Code of Civil Procedure, is generally known to the population and that it will thus hardly

be necessary especially to advertise it. Besides, the legal applications offices of the courts and also the attorneys at law give information, if required.

The public legal advice offices are, as a rule, advertised in the regional press as well as by radio and television, sometimes also by the distribution of booklets and handbills or posters shown in the offices of public authorities.

GREECE

ICELAND

- a. and b. None.

ITALY

See reply to Q 32.

LUXEMBOURG

A legal information service providing particulars of the procedures to be followed and formalities to be completed has been set up and widely publicised in the press.

NETHERLANDS

- a. Information booklets issued by the Ministry of Justice and television spots. Legal Aid Boards have been advertising their opening hours in local papers for about 2 years.
- b. See under (a); some of the associations referred to in the reply under Q 32 (3 and 5) make use of television, the press and their periodicals.

NORWAY

- a. From time to time the central government and the county administration insert advertisements publicising the availability of legal aid and advice in the country's newspapers. In addition, guidance on the legal aid schemes is given at the Police School, schools of social services and similar institutions. Apart from the above no systematic action is undertaken to publicise or to encourage people to avail themselves of the schemes.

PORTUGAL

- a. and b. In 1970, on the basis of Act No. 7 of that year, the existence of the legal aid services was publicised by lawyers and law officers through a series of press, radio and television announcements.

The arrangements for legal advice (see Q. 36) are made known to potential litigants by law officers and through literature published by the Bar, the trades unions and the professional

SWEDEN

- a. When the legal aid reform was introduced in 1973 the central authority published some booklets and folders about the reform. There was also some advertising in newspapers and even short "flashes" on TV. The folders and the booklets have been made up to date every year.
- b. Lawyers who are consulted in legal matters regard it a duty to help their clients to get legal aid or advice, if that is available.

For further information see Mr Hellners' report p 16, (Appendix VI to this document, p. 207).

SWITZERLAND

TURKEY

As there are no legal aid offices in Turkey no reply is given to Q 40 and 41.

UNITED KINGDOM

The schemes are publicised primarily by explanatory leaflets which are distributed throughout the country to courts, law society offices, citizen's advice bureaux, local authorities, government departments and many voluntary organisations. Solicitors undertaking legal advice work may display outside their offices a sign saying "legal aid scheme" and featuring a distinctive legal aid symbol.

After the advice and assistance scheme came into operation in April 1973 an advertising campaign to publicise the scheme was launched. This was based on leaflets, advertising in the press and on television, posters and advertisements in buses. The Central Office of Information (an official organisation), with the assistance of an advertising agency, was appointed to carry out the tasks of promoting and running the campaign, subject to the necessary technical advice from the Law Society. It is intended that in future the emphasis of the campaign should be less on mass advertising and more on public relations with "recommenders".

CANADA

The amount of publicity given to the availability of legal aid varies from province to province. The public are informed of the availability of legal aid by the press, radio and television. When individuals come into contact with the court system they are informed of the availability of legal aid. If an individual appears eligible for legal aid he is encouraged to use the relevant legal aid plan by lawyers and other functionaries of the legal system with whom he comes in contact.

FINLAND

- a. and b. The communes maintaining public legal aid offices, inform their inhabitants in an appropriate manner (usually in local newspapers). The government has not organised any continuing official information about the possibility of obtaining legal aid, but the present systems of legal aid and advice have to some extent been presented by using radio and television.

Question No. 41

- a. Is a lawyer who acts for a person under the legal aid scheme liable for damages?
- b. If not, is the legal aid authority liable for the acts of the lawyer?

Replies

AUSTRIA

A lawyer who acts for a person under the legal aid scheme is subject to the liability provided under the ethics of the profession and the general damages law. In respect of the Preliminary Lawyers' Information Services which are provided free of charge, it appears from the "General Directives", that neither the lawyer nor the Bar Council is liable for damages (see Appendix I to this document).

BELGIUM

The liability of a lawyer who acts for, or advises, a person under the legal aid scheme is identical with that of a lawyer assisting a private client.

CYPRUS

There is no distinction as to the position of the lawyer who acts for a person who is granted legal aid and a lawyer who acts for a person under normal circumstances as to the liability of such lawyer towards his client.

DENMARK

A lawyer's liability shall be the same as in ordinary counselling.

FRANCE

- a. Yes, if he acts unprofessionally (the same responsibility as in paying cases).
- b. No.

FEDERAL REPUBLIC OF GERMANY

- a., b. The attorney at law is liable for any damage on the basis of the contract of representation to the same extent as an attorney paid by the party.

If legal advice is given by a public information office, it may be liable for breach of official duty.

GREECE

- a. Yes.
- b. -



ICELAND

- a. Yes.
- b. No.

ITALY

See reply to Q 32.

LUXEMBOURG

- a. and b. A barrister is always liable for his actions, whether under the legal aid scheme or in normal proceedings.

NETHERLANDS

- a. Yes, in the same way as one acting for a fee paying client.
- b. Legal Aid Boards and legal aid centres are liable for advice given by them or by their staff. No examples are known of a Legal Aid Board being held liable.

NORWAY

- a. All practising lawyers must take out liability insurance, and such insurance also covers tortious liability in respect of legal aid proceedings and legal advice.

PORTUGAL

A barrister appointed under the legal aid scheme is liable for damages exactly as if he were acting for a private client.

SWEDEN

- a. Yes.
- b. The State is responsible for damages caused by lawyers employed at public law offices.

SWITZERLAND

All lawyers have the same liability, whether they are appointed ex officio or by their clients,

TURKEY

See reply to Q 40.

UNITED KINGDOM

Generally speaking, a lawyer's relationship with his client is unaffected by the fact that the client is legally aided, and the lawyer is liable for damages in the same way as if his client were not legally aided.

CANADA

The liability of lawyers acting for persons under legal aid schemes is the same as that of lawyers in private practice.

FINLAND

- a. He carries the same liability for damages as lawyers in cases of fee-paying clients.
- b. -

Question No. 42

Please furnish any available statistics relating to your legal aid and advice schemes (eg the number of cases, total costs etc).

Replies

AUSTRIA

Apart from what has been described in the foregoing, no statistics and surveys on legal aid and advice systems are kept within the Federal Ministry of Justice.

As the new legal aid system was introduced only a little more than two years ago with the result of having considerably improved the legal protection of the population while not revealing any grievances so far, there is no reason for modifying the system. The "Preliminary Lawyers' Information Service", which is just in its beginning, is - as was mentioned above - to be further developed.

It should be added with respect to the administrative procedure that the Federal Government repeated in their policy statement of 5 November 1975, the idea of providing administrative services and imposing on the officers conducting an administrative proceeding the obligation to give guidance to persons not represented by a lawyer as had been suggested before in the government's policy statement of 1971 and in the report of the Administration Reform Commission of 20 November 1974. To this end plans are being drawn up for amending accordingly the General Administrative Procedure Act and establishing information centres. It is noted, however, that the other territorial authorities are required to co-operate in the preparation of these plans and it cannot yet be foretold when these will be put into concrete form.

BELGIUM

The Ministry of Justice has no available statistics in this field.

CYPRUS

No statistics are kept.

DENMARK

For the period 1 April 1974 - 1 April 1975 the costs of legal aid amounted to approx Dkr 11,200,000 (approx £891,000 or FF 8,057,500). The costs of legal advice were only approx Dkr 223,000 (approx £17,740 or FF 160,430).

The number of cases in which legal aid or legal advice has been provided is unknown.

FRANCE

See appended tables (Appendix II to this document).

FEDERAL REPUBLIC OF GERMANY

There are the following statistics on legal aid in legal disputes under civil law during the last five years until 1975. For comparison, the total number of cases decided by the courts at the various levels precedes the figures on legal aid cases:

I. <u>Local courts (Amtsgericht)</u> (as Courts of first instance)	1971	1972	1973	1974	1975
Civil cases dealt with	814514	780851	801325	859147	924413
Legal aid was:					
a. granted					
- to the plaintiff	41527	41279	38495	38483	37213
- to the defendant	4023	3875	3884	3933	5188
b. refused					
- to the plaintiff	3945	3562	3658	3523	3974
- to the defendant	782	663	729	684	799
II. <u>Regional courts (Landgericht)</u> (as Courts of first instance)					
Civil cases dealt with	358908	382610	404907	469152	489763
Legal aid was:					
a. granted					
- to the plaintiff	26436	25555	24680	26983	30086
- to the defendant	11825	10710	10088	11142	13714
b. refused					
- to the plaintiff	4395	3942	3641	3472	3636
- to the defendant	1226	1141	1045	1031	1109
III. <u>Regional courts (Landgericht)</u> (as Appellate Courts)					
Appeals dealt with	41556	43476	44145	47589	50896
Legal aid was:					
a. granted					
- to the appellant	1379	1335	1101	1116	1275
- to the respondent	2045	1812	1619	1532	1827
b. refused					
- to the appellant	883	813	667	663	714
- to the respondent	105	99	105	104	101

IV. Higher Regional Courts (Oberlandesgericht)  
(as Appellate Courts)

	1971	1972	1973	1974	1975
Appeals dealt with	38653	40137	41700	44590	49722

Legal aid was:

a. granted					
- to the appellant	1748	1558	1486	1423	1584
- to the defendant	2318	2178	2117	1972	2075
b. refused					
- to the appellant	1091	952	890	839	895
- to the respondent	130	143	132	140	133

V. Federal Court of Justice (Bundesgerichtshof)  
(as Court of Review)

Review proceedings dealt with	1996	1916	1779	1858	1979
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Legal aid was:

a. granted	128	127	115	101	109
b. refused	153	135	112	97	119

The current statistics contain no material regarding legal aid in proceedings before the courts of general administrative jurisdiction and financial jurisdiction.

However, the result of a representative evaluation of files made in 1968 shows that the importance of legal aid in financial jurisdiction was next to nothing, as among 1000 cases covered by the survey and concerning proceedings before the finance courts of first instance concluded by judgment or provisional notices there was not one case where legal aid had been granted (cases where legal aid had been refused were not counted).

On the other hand, as far as general administrative jurisdiction is concerned the granting of legal aid is of some importance, though only of a minor one. In the case of 2000 proceedings concluded before the administrative courts of first instance by judgment or provisional notice legal aid was granted to the plaintiff in 47 cases, to the defendant in 2 cases (granting of legal aid to the defendant was not the subject of the query, as the defendant is, as a rule, an authority).

Among 1000 cases concluded in the same way before the Higher Administrative Courts legal aid was granted to the appellant in 8 cases and to the respondent in 6 cases.

As regards legal aid in proceedings before the Federal Social Court (cf. Q.3 (a)) the following statistics are available:

	1972	1973	1974
Review proceedings dealt with thereof	2317	2056	1912
Legal aid granted	43	31	32
Legal aid refused	568	512	473
Review proceedings dealt with objections on non-admission	1975	1976	
dealt with	1325	821	
thereof	759	1552	
legal aid granted (objections on non-admission)	36	41 (109)	
legal aid refused (objections on non-admission)	233	32 (1167)	

The burden on the Treasury by fees and expenses paid to indigent persons' attorneys, according to rough estimates, now amounts to 60 to 70 million Deutsche Marks per year. Not readily available are the figures on the charges on the budget by allowances paid to witnesses and expert witnesses, travelling expenses of indigent parties and loss of court fees on the debit side of the budget and, on the credit side, the amounts collected from the opponent as the losing party and from the indigent party by reason of an order for subsequent payment (Section 125 of the ZPO).

As regards legal advice, statistical material is available only from some of the Länder or individual court districts, but not for the entire Federal Republic of Germany. Moreover, the information is partly incomplete and covers only short periods. This information, therefore, is not submitted.

GREECE

ICELAND

In the year 1975 legal aid was granted in 19 cases before the lower court, and in 8 cases before the Supreme Court. Total cost not available.

ITALY

Statistics on the matter are available for the years 1971 and 1972. Statistical data concerning the following years are not available yet.

1971

A. Applications for admission to legal aid submitted to the Legal Aid Commission at the courts of the Republic of Italy.	4,201
Applications admitted to legal aid	2,709
Rejected applications	451
Applications waived by the claimant party	186
B. Applications for admission to legal aid, submitted to the II Degree Legal Aid Commission (at the appeal courts of the Republic of Italy) to appeal against decisions issued by I degree legal aid commissions	70
Applications admitted to legal aid	26
Rejected applications	25
Applications waived by the claimant party	1
C. Applications for admission to legal aid, submitted for the first time to legal aid commissions at the appeal courts of the Republic of Italy	149
Applications admitted to legal aid	85
Rejected applications	38
Applications waived by the claimant party	7

1972

A.	Applications for admission to legal aid submitted to the Legal Aid Commission at the courts of the Republic of Italy	3,473
	Applications admitted to legal aid	2,192
	Rejected applications	389
	Applications waived by the claimant party	157
B.	Applications for admission to legal aid, submitted to the II Degree Legal Aid Commission (at the appeal courts of the Republic of Italy) to appeal against the decisions issued by I degree legal aid commissions	65
	Applications admitted to legal aid	14
	Rejected applications	44
	Applications waived by the claimant party	1
C.	Applications for admission to legal aid, submitted for the first time to legal aid commissions at the appeal courts of the Republic of Italy	107
	Applications admitted to legal aid	50
	Rejected applications	31
	Applications waived by the claimant party	8

LUXEMBOURG

The Ministry of Justice has no statistics.

NETHERLANDS

The following tables are attached (Appendix III to this document). (I) National figures (mainly from the national budget), (II) Details of designations in 3 districts of different size, (III) Financial details of eligibility, (IV) Details of the nature of cases involved and (V) Details of applicants and the outcome of their applications, with reference to the new Amsterdam legal aid centre.

NORWAY

The statistics for 1974 in respect of legal advice and a review of the period 1971-74 are attached (Tables I-III) Appendix IV to this document.

As regards legal aid in court proceedings in 1974 the State's expenditure on legal aid services amounted to Nkr 6.1 million.

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Decisions relating to legal aid in 1973-74:

	<u>1973</u>	<u>1974</u>
No. of applications decided by the Ministry	680	624
Whereof applications refused	212 (31%)	206 (33%)
Whereof applications granted	468 (69%)	418 (67%)
Whereof exemptions from court fees (mainly applications granted, see below)	66	50
No statistics have been drawn up in respect of legal aid granted by the courts (cases relating to family law).		

PORTUGAL

We have no statistics on the legal aid and advice systems. The number of complete rejection of applications for legal aid is, however, believed to be very low.

SWEDEN

See Mr Hellners' report p 14-15 (Appendix VI to this document, pp. 206-207).

SWITZERLAND

We have no knowledge of any statistics.

TURKEY

It is at present difficult to furnish statistics relating to our legal aid scheme.

UNITED KINGDOM

In England and Wales in the year 1975/76 a total of 207,977 legal aid certificates were granted and a total of 254,558 solicitors' bills for legal advice and assistance were paid. The total net cost to the legal aid fund of the legal aid, advice and assistance schemes in that year was £40.85 million. Attached are tables (published by The Law Society) giving statistics relating to the scheme. (See Appendix VIII to this document).

CANADA

Copies of the latest annual reports of Canadian provincial legal aid plans are available.

FINLAND

The costs of the State for legal aid (according to the Act on Legal Aid in Court Proceedings) were in 1976 about 25,000,000 FMK. The costs of the State for legal advice were in 1976 about 11,000,000 FMK. The share of the State is about 75% of the total costs. Thus, the total costs of communal legal advice were in 1976 nearly 15,000,000 FMK.

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E. Trends Question No. 43

- a. Are there any projects for improving the existing legal aid and advice systems in your country?
- b. If so, please give brief details mentioning any matters in the order of this questionnaire and point to any trends.

Replies

AUSTRIA

See reply to Q 42.

BELGIUM

A Legal Aid Committee has recently been set up in order to seek a solution to the problem of indemnifying lawyers appointed by the Advice and Protection Bureau to defend persons of modest financial means.

CYPRUS

There are at present no prospects for improving the existing legal aid and advice systems in Cyprus. In view of Article 30 (3) (d) of the Constitution of Cyprus where it is provided that every person has the right to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require, and as provided by law, soon after the establishment of the Republic of Cyprus in 1960 efforts were made to promulgate a law on legal aid and advice so that to bring our legislation in conformity with the provisions of our Constitution. Unfortunately, since the intercommunal troubles between the Greek and Turkish communities which started in 1963 and the anomalous political situation that has been in existence ever since, the matter remained at that.

DENMARK

A revision of the financial conditions for legal aid and legal advice is under consideration with a view to narrowing the large gap between the income limits applicable to the two categories. In this connection it is also being considered to revise the fee payable to lawyers for providing legal advice. However, these considerations are so new that no details are as yet available about their final outcome.

FRANCE

Not at present.

FEDERAL REPUBLIC OF GERMANY

- a. The existing legal aid system is at present discussed by experts to try to find ways, especially to enable people of moderate means to have access to the courts with really equal chances. A Commission existing with the Federal Ministry of Justice, too, has concerned itself with legal aid and has submitted suggestions for improvement. Their aim is to abandon the existing limitation of the so-called

legal aid to "poor persons" ("Armenrecht"), which is granted to actually destitute persons, and to transform it into a general benefit scheme for the payment of court fees and expenses ("Prozesskostenhilfe") available to any citizen who needs public assistance for any proceedings he wants to bring. The basis for the establishment of the relevant facts is to be a statutory table from which, for the individual income brackets, the amounts may be taken which must be left to a person for his own maintenance and that of any dependants and should not be used to pay for legal proceedings.

No definite opinion has been formed in the Federal Ministry of Justice to answer the question which of the reform programmes at present discussed should be submitted for legislation.

Moreover, it is discussed whether legal aid and the appointment of counsel might not be extended to the whole social court proceedings. A recommendation to this effect has been made by the Co-ordinating Committee appointed to unify the procedure of the administrative, the finance and the social courts.

- b. At present it is impossible to say what shape the extrajudicial legal advice will take in the future. In various Länder pilot projects are being conducted to find the most expedient form of giving legal advice. Especially, in these pilot projects the following questions are to be clarified:

- Is extrajudicial legal advice to be given by the courts and other public authorities or by attorneys at law?
- If advice by attorneys at law is expedient, should it be given in offices of the public authorities or in the attorneys' chambers?
- To what extent may existing public or private institutions for giving legal advice (eg trade unions, tenants' or consumers' associations, etc) be included in the scheme?
- To what extent is an examination of the applicant's financial situation required and, if so, what test is to be applied to establish indigence (eg with reference to the rates of social benefits or the statistically established average gross income)?
- Which legal spheres should be covered by legal advice?
- How far should the assistance extend (ie only to legal advice or also to assistance in the writing of letters or negotiations with the opponent)?
- What will the operating costs, including those for personnel, be?

GREECE

ICELAND

- a. and b. In 1975 the Parliament of Iceland (in plenum) passed a resolution urging the Minister of Justice to set down rules on legal assistance for indigent persons, whereby they could obtain legal advice for minimal charges.

ITALY

- a. On government's proposal, a Bill dealing with legal aid at government's expense has been brought before parliament after the approval of the Senate during the session of 24 May 1973; parliament has not passed the Bill before the end of legislature's time.

LUXEMBOURG

- a. and b. Studies are in progress for the purpose of setting up a more comprehensive legal aid scheme, including payment for barristers' services and making aid more widely available to the less privileged sections of the population, providing for partial aid in some cases.

NETHERLANDS

The prospects for improving the legal aid and advice systems are mainly the following:

- i. Experimental legal aid centres are being set up in most districts. See the answers to Q. 39.
- ii. The possibility of an entirely different system is being studied, mainly on the basis of the recent report by the Boekman Committee, a committee of the Dutch Bar.
- iii. A Bill is being prepared to amend the Legal Aid and Advice Act. The following points are being considered (numbers refer to questions):
  - 1b. the abolition of the residence requirement in Aliens Act cases, Extradition Act cases and work permit cases (this proposal was introduced in a 1976 Bill to amend the Aliens Act),
  4. the abolition of the rule that the Legal Aid Boards decisions on legal aid for civil proceedings must be confirmed by the court,
  5. the possibility of prescribing uniform eligibility limits; the introduction of legal aid, regardless of means, to employees committees appealing against certain general employers' decisions (This proposal was introduced in a June 1976 Bill to amend the Employees, committees Act),
  9. the possibility of including experts' fees in legal aid,
  10. substantially raising the contribution maximum,
  11. the abolition of the reduced rate system,
  12. the abolition of the municipal authority statements,
  24. making decisions concerning the contribution subject to appeal.

NORWAY

- a. The question of improving the existing legal aid and advice schemes has been discussed by an officially appointed legal aid committee. The committee's report was presented on 1 June 1976. The report is under consideration in the Ministry of Justice which is going to present a parliamentary report on the matter.

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PORTUGAL

Under the Constitution no one may be prevented from having access to courts on economic grounds.

The Portuguese Government is accordingly preparing a reform of the legal aid scheme and it plans to set up a system of legal advice on a national scale. To this end, the Government is collecting comparative law data and particulars of experience acquired as a result of the system in operation since 1970. It is planned to extend this system to all courts after eliminating the shortcomings revealed in practice.

The system appears to be sufficiently flexible to be extended forthwith to all courts, with adjustments permitted to be made by the magistrates responsible for dealing with applications for legal aid.

SWEDEN

See Mr Hellners' report p. 16 (Appendix VI to this document, p. 207). The Commission mentioned in the report is expected to publish its proposals in September 1977. Another Commission has recently been appointed to study the organisation of the public law offices.

SWITZERLAND

The Federal Court has interpreted Article 4 of the Constitution in such a way that the cantons have established a satisfactory legal aid system. The Confederation has no similar jurisdiction in the matter of legal advice.

At federal level, there is no definite plan for introducing a legal advice service (on federal law) for the less prosperous sections of the Community. On the other hand the Federal Justice and Police Department tries, as far as possible, to reply to citizens' queries and to provide legal and other information to those requesting it.

TURKEY

We have no current projects for improving the legal aid system.

UNITED KINGDOM

There are a number of projects. Most important are the separate Royal Commissions which are being set up for England and Wales and Northern Ireland and for Scotland with the following terms of reference:

"To enquire into the law and practice relating to the provision of legal services and to consider whether any, and if so what, changes are desirable in the public interest in the structure, organisation, training, regulation of and entry to the legal profession, including the arrangements for determining its remuneration, whether from private sources or public funds and in the rules which prevent persons who are neither barristers nor solicitors from undertaking conveyancing and other legal business on behalf of other person".

The Commissions' studies will be far-reaching, and will undoubtedly have an important bearing on the legal aid and advice schemes.

In addition, a number of studies are currently being carried out.

A special study has been undertaken, within the Lord Chancellor's Office, of the nature and extent of the need for legal services in the sections of the Community who needed legal help and were not getting it. (The Lord Chancellor's Legal Aid Advisory Committee had drawn attention to the fact that there were many people whose legal rights were, for a variety of reasons, going wholly by default, and recognised that such defects in the provision of legal services needed to be identified with greater precision.) The study was designed to pinpoint the nature of the deficiencies and the best way of overcoming them within the limits of what was economically practicable.

The Lord Chancellor's Legal Aid Advisory Committee (which advises him on legal aid matters) is currently carrying out the first review, since the inception of the legal aid scheme, into the financial conditions relating to legal aid, advice and assistance scheme. These are being examined in particular by a working party which is examining, among other matters, the method of assessing contribution, the nature of the contribution itself, and the link between assistance under the advice and assistance scheme and legal aid under a subsequent certificate, including the possibility that the two might be more closely connected.

Finally, another working party is reviewing the whole of the legal aid legislation in order to get rid of provisions that are no longer needed and generally to overhaul the legislation. The working party's first report, which dealt with issues of principle (including for example, the question whether legal aid should be extended to those courts and proceedings for which it is not at present available and the conditions under which unassisted persons may be able to recover their costs out of the legal aid fund and the question whether there should be wider rights of appeal against the refusal of legal aid committees to grant legal aid or against the withdrawal of legal aid certificates) was published last year. It is now working on its second report, which will deal with mainly minor and technical matters and will contain proposals for dealing with a number of anomalies and defects in the legislation which have come to light.

#### CANADA

To indicate present legal aid trends in Canada, reference is made to Legal Aid in Canada - 1975; notes and background material for an address delivered at the Second National Legal Aid Conference in Victoria, British Columbia, on 11 June 1975 by Ian B Cowie, Special Adviser on Legal Aid to the Federal Department of Justice.

Special note should be taken of the Community Legal Services Programme, a programme initiated by the Federal Department of Justice in Canada to provide funding to independent projects engaged in the delivery of legal services. The funding is intended to work as a stimulus to these projects to undertake experimentation with different delivery and service mechanisms as a means of improving upon the present provision of legal services to the poor. The programme is experimental and funding is not provided generally to projects engaged in traditional delivery of basic legal services. This programme has resulted in a number of innovative approaches to the problem of delivering legal services to Canada's poor. More data on the types of experimentation being undertaken under this programme is available upon request.

#### FINLAND

The present legislation was enacted quite recently, in 1973. Therefore, there are no major projects for improving the existing systems. At present one is collecting data about how the schemes work in practice.

## A P P E N D I X I

### AUSTRIA

#### News from the Bar Councils

#### Vienna, Lower Austria and Burgenland

#### General Directives for the "Preliminary Lawyers' Information Service"

- a. Giving of advice by lawyers under the Preliminary Lawyers' Information Service shall be free of charge.
- b. The advice shall be limited to the legal evaluation of the facts as stated by the person seeking advice and to an examination as to whether assistance by a lawyer appears advisable. The time of giving advice to a person shall as far as possible not exceed ten minutes.
- c. The Bar Council shall not be liable for any advice given by the Information Service.
- d. The advice given under the Information Service does not establish a client's relationship to the lawyer giving the advice. The latter is therefore not barred from accepting a brief in the same matter unless there is an obvious danger of collusion.
- e. The lawyer giving advice shall give his name. But under the Information Service there shall not be either given or accepted an instruction and authorisation.
- f. If a person is recommended to seek a lawyer's assistance he shall be told that every help by a lawyer outside the Information Service has to be paid for.
- g. Information on the probable costs to be charged may be given, while checks of the performances and calculations of costs by other lawyers shall be inadmissible.

(Adopted at the meeting held by the Committee of the Bar Council for Vienna, Lower Austria and Burgenland on 28 October 1975.)

A P P E N D I X    I I

FRANCE

	COURTS OF APPEAL AND DISTRICT COURTS											
	1 January 1974 to 31 December 1974				1 January 1975 to 31 December 1975				1 January 1976 to 31 December 1976			
Metropolitan Territory	Applic- ations	Granted Total Partial Aid Aid		Refused	Applic- ations	Granted Total Partial Aid Aid		Refused	Applic- ations	Granted Total Partial Aid Aid		Refused
Metropolitan Territory	113.743	52.098	16.971	14.624	140.468	77.158	13.557	11.002	156.122	88.874	20.814	13.486
		<hr/> 69.069				<hr/> 90.725				<hr/> 109.688		
Overseas Departments	4.655	2.926	107	291	5.183	3.808	104	340	4.959	3.933	123	206
		<hr/> 3.033				<hr/> 3.912				<hr/> 4.056		
Totals	118.398	55.024	17.078	14.915	145.651	80.976	13.661	11.342	161.081	92.807	20.937	13.692
		<hr/> 72.102				<hr/> 94.637				<hr/> 113.744		



<u>JURISDICTIONS</u>	<u>LEGAL AID</u> 1 January to 31 December 1976					<u>LEGAL AID</u> 1 January to 31 December 1976				
	Applications	Inadmissible Lack of competence	Granted Full Partial		Refused	Applications	Inadmissible Lack of competence	Granted Full Partial		Refused
Court of Cassation	2,782	59	375	103	1,246	3,072	72	373	103	1,358
Conseil d'Etat and Jurisdictional Courts	891 <sup>(1)</sup>	23	330	13	425	660	25	230	7	428
Administrative Courts	436	33	248	13	146	562	33	306	40	136

(1) From 15 September 1974 to 15 September 1975.

A P P E N D I X

LEGAL AID

Memorandum on Legal Aid for Aliens (1)  
for information

I. RIGHT TO APPLY FOR LEGAL AID

Under French law, aliens are entitled to apply for legal aid if they reside in the country (Act of 3 January 1972, section 1). The framers of the law thought it fair to give resident aliens the benefit of legal aid to enable them to claim their rights in court or to engage counsel to defend them since they play a part in the economic, social and cultural life of the country and the jurisdiction of the defendant's court is generally recognised as a fundamental principle.

Conventions have been concluded to extend the right to apply for legal aid to stateless persons and non-resident aliens.

1. STATELESS PERSONS (Geneva Convention of 28 September 1954)

Stateless persons are those whom no State recognises as nationals. They are entitled to apply for legal aid provided they reside in France.

2. NON-RESIDENT ALIENS

Non-resident aliens are entitled to apply for legal aid either as a general rule for any judicial action or solely for actions to recover maintenance.

A. GENERAL ENTITLEMENT

The Conventions giving non-resident aliens the right to apply for legal aid as a general rule fall into two categories according to their provisions. Most of them contain a clause expressly granting this right; a few contain clauses granting the right in conditions which are open to interpretation. Where the interpretation of such clauses is concerned, the member States of the Council of Europe are in a category apart.

CLAUSE EXPRESSLY GRANTING THE RIGHT TO  
APPLY FOR LEGAL AID

The right to apply for legal aid is granted expressly to nationals of the following countries: Algeria; Germany (Dem. Rep.); Germany (Fed. Rep.); Austria; Belgium; Benin (former Dahomey); Bulgaria (in process of ratification); Cambodia (Democratic Kampuchea); Cameroun; Congo-Brazzaville; Côte d'Ivoire; Denmark; Spain; United States; Finland; Gabon; United Kingdom; Upper Volta; Hungary; Iran; Iceland; Israel; Italy; Japan; Laos; Lebanon; Madagascar; Mali; Morocco; Mauritania; Monaco;

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- (1) Bibliography: Batiffol et Lagarde: Droit International Privé; Lagarde: Assistance judiciaire au Répertoire Dalloz de Droit International; Laroche de Roussane: L'aide judiciaire - 1973; Simon-Depitre: Droit International judiciaire au juriscasseur de droit international (1974); Solus et Perrot: Droit Judiciaire Privé.

Niger; Norway; Netherlands; Poland; Portugal; Central African Republic; Dominican Republic; Romania; San Marino; Senegal; Sweden; Switzerland; Tanzania; Chad; Czechoslovakia; Togo; Tunisia; Turkey; USSR; Uruguay; Vatican; Vietnam; Yugoslavia.

CLAUSES OPEN TO INTERPRETATION

The factors concerning non-resident aliens' right to apply for legal aid that may require interpretation depend at once on the purpose of the treaty and on its terms, subject to reciprocity.

The clauses requiring interpretation are of three types:

- the clause entitling aliens to be treated as nationals, which refers to the national legal aid system in the country where the application is made. Legal systems differ widely where legal aid for aliens is concerned;
- the clause giving entitlement to most-favoured-nation treatment, whose effect coincides with that of the aforementioned type of clause, "the country enjoying the most favourable treatment being that whose citizens are treated in the same way as nationals" (Simon-Depitre, op. cit.);
- the clause entitling to free access to justice, "the right to legal aid being seen as the essential condition of the exercise of the right to free access to justice" (Solus and Perrot: op. cit.).

These three types of clause are contained in treaties "whose purpose is not the same". Some of them have a general application; others, like trade agreements, are restricted in scope. The application of the clause giving entitlement to legal aid is bound up with the subject of the treaty.

The Conventions open to interpretation concern the following countries:

Argentina: Trade Convention - most-favoured-nation clause;  
Canada: Establishment Convention - free access to justice clause;  
Chile: Friendship, Trade and Navigation Treaty - free access to justice clause;  
Colombia: Convention on the Establishment of Nationals, Trade and Navigation - most-favoured-nation clause;  
Cuba: Trade Convention - free access to justice and treatment as nationals clauses;  
Ecuador: Trade Convention - most-favoured-nation clause;  
Greece: Convention on Trade, Navigation and Establishment - most-favoured-nation and free access to justice clauses.

Greece - a member of the Council of Europe - has a legal system which allows non-resident aliens legal aid provided that reciprocity is guaranteed by convention, legislation or court practice.

Nicaragua: Convention on Trade and Establishment - free access to justice clause;  
Paraguay: Trade and Navigation Convention - most-favoured-nation clause;  
Peru: Friendship, Trade and Navigation Treaty - free access to justice clause.

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SITUATION OF MEMBER COUNTRIES OF THE  
COUNCIL OF EUROPE

The Committee of Ministers of member Governments, in its Resolution (76) 5 of 18 February 1976 recommended Governments of member States:

"to accord under the same conditions as to nationals legal aid in civil commercial and administrative matters irrespective of the nature of the tribunal exercising jurisdiction:

- a. to natural persons being nationals of any member State;
- b. to all other natural persons who have their habitual residence in the territory of the State where the proceedings take place."

As our international undertakings stand at present, point (a) of this recommendation concerns France's relations with Cyprus, Greece, Ireland and Malta.

B. MAINTENANCE CLAIMANTS (combined provisions of the New York Convention of 1956 and of the Conventions referred to under 2 A above)

The right to apply for legal aid has been granted to alien maintenance claimants, even if they do not reside in France, where they are nationals of one of the following countries: Argentina, Barbados; Brazil; Chile; China (Taiwan); Ecuador; Greece; Guatemala; Haiti; Pakistan; Philippines; Sri-Lanka (former Ceylon).

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II. RETENTION IN ANOTHER STATE OF ENTITLEMENT TO LEGAL AID

A party granted legal aid in the State of origin (of the proceedings) retains entitlement to it in the State requested to communicate judicial documents, to conduct judicial enquiries or to pursue enforcement procedure.

1. NOTIFICATIONS AND EXECUTION OF LETTERS ROGATORY (Hague Convention of 1 March 1954)

"If the benefits of legal aid have been granted to a national of one of the Contracting States, service in another Contracting State of documents relating to his case, regardless of the manner in which it is effected, shall not give rise to any reimbursement of costs by the requesting State to the requested State.

The same shall apply to letters rogatory, with the exception of fees paid to experts."

2. PROCEDURE FOR THE RECOGNITION AND ENFORCEMENT OF DECISIONS

A party granted free legal aid in the State where the decision has been rendered retains entitlement to it for the purpose of the recognition and enforcement of the decision in the requested State.

The sphere of application of the provisions of the Conventions concluded in the matter varies. Either they apply to all judicial decisions or solely to decisions in the matter of property or maintenance claims.

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A. RECOGNITION AND ENFORCEMENT OF ALL JUDICIAL DECISIONS

These are bilateral Conventions which lay down the general rule that entitlement to legal aid in the State of origin is retained in the requested State for the purposes of the recognition and enforcement of all judicial decisions.

Conventions of this type have been concluded with the following countries: Cameroon; Congo-Brazzaville (in process of ratification); Spain; Madagascar; Niger (in process of ratification); Poland; Romania; Senegal; Switzerland; Togo (in process of ratification); Yugoslavia.

Some of these Conventions allow entitlement to legal aid to be retained until the conclusion of the enforcement procedure.

B. RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO PROPERTY CLAIMS

The retention of entitlement to legal aid for the purpose of the recognition and enforcement of decisions concerning property claims is provided for in the Brussels Convention of 27 September 1968.

The States parties to this Convention are: Germany (Fed. Rep.); Belgium; Italy, Netherlands; Luxembourg.

C. RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING MAINTENANCE CLAIMS

The provisions of the Brussels Convention referred to above combined with those of the Hague Convention of 2 October 1973 (in process of ratification) allow entitlement to legal aid to be retained for the purposes of the recognition and enforcement of decisions concerning maintenance claims.

The States parties to the Hague Convention are: Germany (Fed. Rep.); Belgium; Italy; Luxembourg; Netherlands; /Portugal (1)/; /Sweden (1)/; /Switzerland (1)/; /Czechoslovakia (1)/.

D. RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING MAINTENANCE CLAIMS IN RESPECT OF CHILDREN

The Hague Convention of 1958 provides for the retention of entitlement to legal aid for the purposes of the recognition and enforcement of decisions concerning maintenance claims in respect of children only;

Having regard to the more general terms of the previously mentioned Conventions, the States that are bound by the Hague Convention of 1958 alone are: Austria; Denmark; Spain; Finland, Hungary; Israel; Liechtenstein; Norway; Portugal; Sweden; Switzerland; Czechoslovakia; Turkey.

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(1) Conventions in process of ratification after approval by Parliament.

### III. APPLICATIONS FOR LEGAL AID

#### 1. PROCEDURE

In France applications for legal aid must be made in writing and deposited with or addressed to the court with a simple covering letter (Decree of 1 September 1972, Article 25).

In the absence of Conventions, the Minister of Justice, represented by the Department for Mutual International Assistance in Legal Matters passes on applications for legal aid coming from abroad or addressed to another country. In practice applications for legal aid are communicated directly by one central authority to another like any judicial documents or letters rogatory.

Certain Conventions lay down special procedure for the transmission of applications for legal aid:

1. Through the courts - this is the procedure with Germany (Fed. Rep.). In practice it concerns the States with which arrangements exist for direct court-to-court communications.
2. Through specialised central authorities. This procedure, which is becoming more widespread, is that provided for in the European Agreement on the Transmission of Applications for Legal Aid of 27 January 1977.

Of the Conventions in force this mode of transmission is provided for in the following:

- the Hague Convention relating to Civil Procedure of 1 March 1954; applications are transmitted by the consular authorities directly to the competent foreign authorities;
- the 1956 New York Convention on the Recovery Abroad of Maintenance; applications are transmitted by the despatching authorities and the intermediate institutions. In France this function falls to the Ministry of Foreign Affairs, represented by the Department for the Recovery of Maintenance Abroad (23 rue La Pérouse, Paris 16).

#### 2. LANGUAGES

Applications for legal aid and the accompanying documents normally have to be translated into the language of the requested country (Hague Convention of 1 March 1954 and European Agreement on the Transmission of Applications for Legal Aid).

There are different arrangements under French domestic law to facilitate applications to foreign authorities for legal aid (Circular of 23 May 1977). They are as follows:

- a. the cost of translating French judicial decisions is covered by legal aid;
- b. it is possible in France to make a preliminary application for legal aid to secure the designation of a translator to translate an application for legal aid that is to be addressed to a foreign authority.

The Convention concluded with Germany (Fed. Rep.) provides that applications for legal aid are to be drawn up in the language of the requesting country and that the cost of any translation required will not be refunded.

### 3. SUPPORTING DOCUMENTS AND REQUESTS FOR INFORMATION

The certificate attesting lack of means is delivered to the applicant by the authorities of his habitual place of residence. Additional information may be sought by the requested authority from the authorities in the State of residence.

A P P E N D I X   I I I

FEDERAL REPUBLIC OF GERMANY

Complete title of  
Statutes mentioned  
and citation to the  
Federal Law Gazette

Act implementing the  
Hague Convention of  
1 March 1954

The Act of 18 December 1958 implementing  
the Hague Convention of 1 March 1954 on  
Civil Proceedings (Federal Law Gazette 1958,  
part I, page 939)

Code of Civil  
Procedure

The Code of Civil Procedure (Federal Law  
Gazette, part III, No. 310-14), last amended  
by the Introductory Act to the Taxation Code  
of 14 December 1976, part I, page 3341).

Court Fees Act

The Court Fees Act in the version of the  
publication of 15 December 1975 (Federal Law  
Gazette 1975, part I, page 3047), last amended  
by the Simplification Amendment of 3 December 1976  
(Federal Law Gazette 1976, part I, page 3231).

Federal Statute on  
Attorneys at Law

The Federal Statute on Attorneys at Law of  
1 August 1959 (Federal Law Gazette 1959, part I,  
page 565), last amended by the Act of  
18 February 1977 Reforming the Legal Relations  
of the Members of the German Bundestag  
(Federal Law Gazette 1977, part I, page 297).

Federal Statute on  
the Fees of Attorneys  
at Law

The Federal Statute on the Fees of Attorneys  
at Law of 26 July 1957 (Federal Law Gazette 1957,  
part I, pages 861, 907), last amended by  
Simplification Amendment of 3 December 1976  
(Federal Law Gazette 1976, part I, page 3281).

Labour Courts Act

The Labour Courts Act of 3 September 1953 (Federal  
Law Gazette 1953, part I, page 1267), last amended  
by the Simplification Amendment of 3 December 1976  
(Federal Law Gazette 1976, part I, page 3281).

**CONTINUED**

**1 OF 2**

Legal Advice Act	The Legal Advice Act of 13 December 1935 (Reich Law Gazette 1935, part I, page 1478), last amended by the Third Act Amending the Tax Advice Act of 24 June 1975 (Federal Law Gazette 1975, part I, page 1509)
Non-contentious Judicature Act	The Non-contentious Judicature Act in the new version of 20 May 1898 (Reich Law Gazette 1898, pages 369, 771) last amended by the Simplification Amendment of 3 December 1976 (Federal Law Gazette 1976, part I, page 3281).
Patent Act	The Patent Act in the new version of the publication of 2 January 1968 (Federal Law Gazette 1968, part I, page 1), last amended by the Simplification Amendment of 3 December 1976 (Federal Law Gazette 1976, part I, page 3281).
Social Courts Act	The Social Courts Act in the new version of the publication of 23 September 1975 (Federal Law Gazette 1975, part I, page 2535), last amended by the Simplification Amendment of 3 December 1976 (Federal Law Gazette 1976, part I, page 3281).
Statute on Administrative Courts	The Statute on Administrative Courts of 21 January 1960 (Federal Law Gazette 1960, part I, page 17), last amended by the Simplification Amendment of 3 December 1976 (Federal Law Gazette 1976, part I, page 3281).
Statute on the Assignment of Patent Agents in Legal Aid Cases	The Statute on the Assignment of Patent Agents in Legal Aid Cases in the new version of Section 187 of the Statute on Patent Agents of 7 September 1966 (Federal Law Gazette 1966, part I, page 557)

Statute on Finance  
Courts

The Statute on Finance Courts of 6 October 1965  
(Federal Law Gazette 1965, part I, page 1477),  
last amended by the Simplification Amendment  
of 3 December 1976 (Federal Law Gazette 1976,  
part I, page 3281).

Statute on the Status  
of Homeless Aliens in  
the Federal Territory

The Statute on the Status of Homeless Aliens  
in the Federal Territory of 25 April 1951  
(Federal Law Gazette 1951, part I, page 269),  
last amended by the Statute on Copyrights and  
Neighbouring Protective Rights of 9 September 1965  
(Federal Law Gazette 1965, part I, page 1273).

A P P E N D I X IV

NETHERLANDS

Table I

National figures

Inhabitants of the Netherlands	approx 13,700,000
Number of designations of lawyers and bailiffs for giving legal aid or advice in 1974 (without immediate advices by the legal aid boards).	71,668

Budget 1976 (legal aid and advice)

fees for lawyers and bailiffs	f 52,650,000
experiments (minimum guaranteed fee for an Amsterdam group of lawyers specialising in legal aid) (see Q 18)	f 465,000
experiments in legal aid offices (staff of these centres) (see Q 39(a))	f 2,340,000
bailiffs (service of writs etc)	f 1,660,000
press announcements by legally aided persons (in bankruptcy cases etc)	f 340,000
administration costs, legal aid boards	f 230,000
attendance fees and costs, members of legal aid boards	f 5,000
subsidies to law shops (between f 2,000 and f 7,500 per law shop).	f 120,000

A P P E N D I X IV

Table II

Applications for legal aid or advice in a large town,  
a medium sized district and a rural district  
in 1974

	<u>Amsterdam</u>	<u>Breda</u>	<u>Assen</u>
Appointments	?		
Lawyers		6,043	1,522
Bailiffs	?	285	184
	<u>12,023</u>	<u>6,328</u>	<u>1,706</u>
Number of contributing clients	?	617	82
Contributions	f1. 97,336.90	f1. 27,730	?
Number of cases			
per lawyer	7,16,24(1)	25-49 <sup>(1)</sup>	51 <sup>(1)</sup>
per bailiff	7,16,24 <sup>(1)</sup>	11-36 <sup>(1)</sup>	26 <sup>(1)</sup>
appeals to the President of the court	10 <sup>(2)</sup>	6 <sup>(2)</sup>	0

(1) This number is subject in Amsterdam to a 3 category system. Every lawyer and bailiff taking part chooses his own category. In Breda it depends mainly on the place where the lawyer or bailiff lives; in Assen the number includes even non-participating lawyers.

(2) In Amsterdam at least one case has been successful, and at least four, including three by one and the same person, have been unsuccessful. In Breda four have been successful.

Table III

Maximum income and property requirements (from 1.1.1976 onward).  
Amsterdam scale (see Q 5).

<u>net income per week (1)</u>	<u>single person</u>	<u>couple</u>	<u>family of 3 or more</u>
(without contributing)	f1 225	f1 295	f1 30 more per person
(contributing)	f1345	f1 415	"
(reduced rate) (see Q 11)	f1400	f1 470	"

Property: single person f15,500; couples f111,000 + f11,200 per child.  
Children of age and children not living with their parents are disregarded. Only 50% of the income of other children is taken into account.

(1) "Net income" means that taxes, insurance contributions, maintenance obligations, rent and many other long term obligations are disregarded.



TABLE IV

Categories of cases concerned

These figures are not quite comparable because every legal aid board, legal aid centre and law shop uses its own classification

	legal aid board Breda 1974	legal aid board Assen 1974	legal aid centre Amsterdam Jan - June 1975	law shop (1) Leyden 1973-1974	law shop (1) Amsterdam 1974
labour law cases	424	80	) 202 (	354) + 382	782
social insurance and national assistance cases	119	39	) (	) "others"	613
housing cases	218 (2)	152 (2)	1,486 (878 (2))	1,486	1,516 (543 (2))
tax cases	few	few	few	1,443	145
Aliens Act cases					
other cases	) 119	30	201 (	67	143
administrative law	)		(	52	123
divorces, maintenance	2,492	770	1,648 (3)	541	535
other family law cases					
excl inheritance law	386	122	1,563	103	307
total (excl criminal cases)	4,796	1,621	5,730	6,116	5,573

(1) Law shops give mainly brief advice; only a small percentage go beyond that by providing a follow up.  
These cases include references to other institutions (eg legal aid boards).

(2) Rent only, including rent of shops, except for the Amsterdam law shop figure which covers rent of homes only.

(3) Excl maintenance cases.

Table V

Additional figures from the new Amsterdam  
legal aid centre, covering the period January - June 1975

A. Outcome

designation of lawyer or bailiff	2,691
referred to the municipal social service	301
referred to other advisers (law shop or trade union, insurance ombudsman etc)	49
referred to other institutions	47
referred to lawyers	136
given brief advice by a lawyer or bailiff	112
advised by non-practising staff lawyer (this figure includes 526 cases of more elaborate advice or follow-ups)	1,814
(total)	6,141 (1)

B. Applicants referred by:

municipal social service	2,566
Amsterdam law shop	85
other law shops etc	92
social counselors (municipal)	216
employment exchange	324
publicity media	149
own lawyers	140
other institutes etc	563
not the first application	1,157
(total)	6,141 (1)

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(1) including 411 criminal cases.

A P P E N D I X V

NORWAY

LEGAL ADVICE ACTIVITIES IN 1976

Table I	Survey of applications according to decision-making authority
Table II	Decisions according to the nature of the case
Table III	Expenditure and revenue

TABLE I  
SURVEY OF APPLICATIONS ACCORDING TO DECISION-MAKING AUTHORITY

	By County Governor	By lawyer	Total
Legal advice granted	6,200	1,517	7,717
Legal advice refused	170	-	170

Total applications 7,887

TABLE II

DECISIONS ACCORDING TO NATURE OF CASE

Nature of case	Legal advice granted		Legal advice refused	
	No.	per cent	No.	per cent
Labour relations	136	1.8	5	2.9
Inheritance and probate	802	10.4	16	9.4
Child welfare	85	1.1	0	0
Matrimonial questions	4,493	58.2	48	28.2
Property questions	398	5.2	32	18.8
Actions in tort	367	4.8	12	7.1
Debt	193	2.5	5	2.9
House rents	265	3.4	3	1.8
Social insurance and pensions	215	2.8	11	6.5
Application for legal aid in court proceedings	22	0.3	2	1.2
Other cases	741	9.6	36	21.2
Not specified	0	0	0	0
Total	7,717	100.1	170	100.0

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TABLE III

EXPENDITURE AND REVENUE

Expenditure:

Authorised lawyers' fees:	Nkr 5,639,530
" expenditure (g7):	" 308,950
Other expenditure:	31,924
	<u>Nkr 5,980,404</u>

Revenue:

Court fees under § 7:	Nkr 79,920
Payments under § 10	" 4,380
	<u>Nkr 84,300</u>

Net expenditure: Nkr 5,896,104

apportioned:

Central government:	<u>Nkr 2,952,690</u>
Counties:	<u>Nkr 2,943,414</u>

A P P E N D I X VI

SWEDEN

LEGAL SERVICES IN SWEDEN FOR DEPRIVED PERSONS,  
PARTICULARLY IN URBAN AREAS

Report presented by (1)  
Mr T HELLNERS, Head of Division  
Ministry of Justice, Sweden  
at the 6th Colloquy on European Law  
(Leiden, 11-13 May 1976)

(1) This report constituted one of the working documents at the  
Colloquy with reference number CE.J/Coll.Leiden (76) 2.

## 1. INTRODUCTION

This report deals mainly with the new system of legal aid which came into force in Sweden on 1 July 1973. To put the new system into its proper perspective, a description will first be given of the events preceding its introduction. It will also be of interest in this connection to note the introduction of legal aid through a form of insurance coverage.

A Free Trials Act was passed in Sweden in 1919. This Act was principally concerned with the need for legal counsel in ordinary court proceedings. It provided that a free trial could be awarded to a person who lacked the resources to pay costs or who, after costs had been paid, would lack the wherewithal for his own livelihood and for the discharge of maintenance obligations. At the beginning of the 1970s the income limit for a single applicant was approximately Skr 20,000 per annum (1). A party awarded a free trial was among other things relieved of the cost of handling charges and of the production of evidence. The State would also pay the cost of his legal counsel. These rules applied to civil cases. A system of public counsel remunerated out of the public funds had already been introduced for criminal proceedings, but under this system the accused had to repay the cost of his defence if he was convicted. Both free trials and the public counsel system were administered by the courts.

Apart from free trials, other forms of public legal aid developed in Sweden. Starting in 1919, a number of county councils and municipalities opened legal aid offices, which were subsidised by the State. In time 15 such offices were opened, and another office was established whose activities were financed entirely by the State. The legal aid offices catered mostly for the densely populated areas of the country, providing free assistance for persons of limited means in all kinds of legal business. Legal aid used to be provided on somewhat more generous terms than were applied by the courts in the matter of free trials, but most of these differences had disappeared by the beginning of the 1970s. Family causes predominated at the legal aid offices, but other matters of private law and administrative business were also common. The work of the legal aid offices proceeded on essentially the same lines as lawyers' activities generally.

During the 1940s a third kind of public legal aid was introduced in the form of a State-subsidised system whereby county councils made agreements with the Swedish Law Society (or branches thereof) for one or more of the society members active in a particular county to provide free legal advice and assistance out of court. This form of legal aid was conditional upon the applicant being of limited means. Eventually the system came to be applied in more than 15 county council areas.

It should be pointed out in this connection that legal assistance in the broader sense of the term had long been provided by authorities for individual persons as part of their general public services. This concerned not only the provision of forms and the furnishing of general advice and instructions, but also the guidance of the parties concerned regarding such matters as the filing of additional documents in cases to be considered by the authorities.

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(1) Skr 100 = DM 58, Hfl 60 and £8.25 approx (February 1976).

Towards the end of the 1950s, insurance companies in Sweden began providing legal aid in the form of legal expenses insurance, ie insurance covering the legal expenses incurred by the insuree in connection with a legal dispute etc. This coverage has not usually taken the form of a separate insurance, although there are separate legal expense insurances for the proprietors of businesses. Instead, the coverage is automatically included in certain insurance policies such as householders' comprehensive policies, house insurance, motor vehicle insurance and boat insurance. The most important of these are the comprehensive policies, which have been taken out by some 85 per cent of the population of Sweden. Legal coverage under this type of insurance includes expenses both in and out of court, but there is a franchise of Skr 200 plus 10 per cent of costs in excess of that amount. Compensation in any single insurance case is subject to a maximum limit of Skr 40,000. The insurance covers both the insuree's own legal costs and costs and damages which he may be ordered to pay his opponent in proceedings before an ordinary court. This is, however, not applicable to divorce proceedings. To complete the record, it should also be mentioned that certain "interest organisations" have long provided their members with legal aid. This applies, for instance, to trade unions and tenants' associations.

As can be seen from the above account, by the beginning of the 1970s there existed in Sweden a variety of arrangements whereby individual persons could obtain legal aid. The criticism levelled against the order of things at that time was mainly concerned with three aspects. Firstly it was thought unsatisfactory that only the persons with the most limited means should be able to obtain legal aid financed out of public funds. The majority of persons with ordinary incomes were excluded from this benefit. Another shortcoming of the system was that the public contribution focussed to a great extent on legal aid in connection with court proceedings, the need for guidance and legal aid out of court and in dealings with administrative authorities being less well provided for. Thirdly the public contribution was incoherent in that it was in the hands of a large number of authorities without any central co-ordination.

## 2. THE NEW SYSTEM OF LEGAL AID IN SWEDEN

### 2.1 Foundations of the system

The new Swedish legal aid system, which is basically outlined in the Legal Aid Act (1972: 429), is aimed at rendering legal aid available to any person in any legal matter where assistance is needed, irrespective of whether that matter is to be dealt with by a court or by some other authority or whether it concerns business of some other nature. The principle of the reform is that nobody must be prevented by financial considerations from safeguarding his legal interests. Legal aid is not to be confined to persons in the lower income groups. Persons with ordinary incomes are also to be provided with legal assistance without having to make undue financial sacrifices, though applicants have to contribute towards actual costs to the extent they are able.

There are four distinct forms of legal aid:

1. general legal aid
2. legal aid to suspected persons in criminal proceedings
3. legal aid by an official assistant
4. legal advice.

The scope of these various forms of legal aid is described in greater detail in Section 2.2. Basically the system implies that general legal aid is provided in any legal matter where no other form of legal aid is provided. General legal aid includes compensation for the cost of legal representation, the production of evidence court proceedings etc. Legal aid to suspected persons in criminal proceedings, which among other things includes public counsel, is confined to criminal law. Similarly, legal aid by an official assistant is exclusively concerned with matters concerning the administrative deprivation of liberty etc. The fourth type of legal aid, legal advice, confers the right to a brief consultation or some comparable measure in connection with legal business on payment of a small fixed charge. Legal advice is obtainable in all the sectors covered by the legal aid system.

Organisationally speaking the system is arranged on the following main lines (for further particulars, see Section 2.3). The legal aid offices (16 in number) existing prior to the reform have been converted into public law offices under the auspices of the State, and an additional 14 such offices have been opened in various parts of the country. In 1975 these 30 offices were staffed by about 100 qualified lawyers and their assistants, making 130 persons in all. The public law offices do not enjoy any monopoly status but compete on equal terms with privately practising lawyers. (In 1975 there were about 1,180 privately practising lawyers in Sweden assisted by about 275 clerks). Six regional legal aid boards were set up to administer the legal aid system. These are above all invested with decision-making powers concerning general legal aid and legal aid by official assistants. The regular courts have important decision-making powers concerning legal aid in cases and proceedings coming before them. A central authority was appointed to supervise the legal aid system. As from 1 July 1975, this central authority has been constituted by the newly established Authority of the Judiciary Administration.

## 2.2 Forms of legal aid

### 2.2.1 General legal aid

#### Scope

The main rule is that a physical person whose estimated annual income does not exceed a certain amount can, subject to payment of a certain cost contribution, qualify for general legal aid in legal matters where he is in need of such assistance. However, there are certain exceptions and conditions attaching to this rule, and they will now be variously considered.

Regarding the category of person, general legal aid is in principle reserved for physical persons. Legal persons, such as joint stock companies and associations, cannot obtain legal aid. The only exception is that made for the estates of deceased persons, but the estate must be in need of legal aid and its value and the economic circumstances of the owners must be such as to justify the award of legal aid.

There are certain restrictions concerning the domicile of the applicant and the relation of the matter to Sweden. The main principle here is that general legal aid must be available to everybody who is domiciled in Sweden (regardless of nationality) if the issue involved is to be tried or otherwise dealt with in Sweden. In other cases legal aid can only be awarded in special circumstances. Such circumstances may, for example, apply if a person domiciled in Sweden is party to divorce proceedings in another Nordic country. By virtue of Sweden's accession to various conventions, non-nationals domiciled in other countries can also qualify for legal aid in matters being dealt with in Sweden.

Another restriction applies to businessmen and concerns matters connected with their business. In order for a person coming under this category to qualify for legal aid, special circumstances must be involved concerning either the businessman's finances or the nature of the case. In the former respect, practice has required the businessman's financial status to be comparable to that of a wage-earner in one of the lower income groups. In the latter respect, it has been stipulated, for instance, that the issue must concern a property where the applicant has both his home and his business.

Concerning the applicant's financial circumstances, as has already been mentioned, there is a maximum limit beyond which general legal aid cannot be awarded. This limit has been determined in relation to the "base sum" as defined by the National Insurance Act and is therefore index-adjusted. The limit is an amount corresponding to eight times the base sum for the month of October the year before legal aid is applied for. The limit for 1976 is  $(8 \times 9,700) = \text{Skr } 77,600$ . This limit can be raised if the applicant significantly contributes towards the maintenance of another person. In this case the maximum is increased by the equivalent of half the base sum (Skr 4,850 for 1976) for each person towards whose maintenance the applicant contributes.

The applicant's annual income is calculated according to certain standard rules established by the central legal aid authority. Apart from dependants, these rules focus mainly on wealth and indebtedness. Wealth is taken into account in such a way that one-fifth of the applicant's net wealth (ie the difference between assets and liabilities) in excess of Skr 40,000 is added to his estimated annual income. If there is a net deficit, this is not taken into account, but instalments in excess of Skr 3,000 are deducted. In determining the right of a spouse or child to legal aid, no consideration is given to the financial circumstances of the other spouse or the child's parents.

General legal aid implies that the State bears the cost of the business concerned, but the applicant has to contribute towards the cost insofar as he is able. The applicant's cost contribution is computed on the basis of his financial circumstances at the time of application and in proportion to his estimated annual income. The latter is determined according to the standard rules described above. An applicant whose annual income does not exceed three times the base sum (Skr 29,100 for 1976) pays a basic charge of Skr 70. A maximum cost contribution is fixed for applicants with higher annual incomes. If the cost of legal aid is smaller than the maximum payment, the applicant bears the full cost through his cost contribution and accordingly no State subsidy is paid. Costs in excess of the maximum payment are borne by the State.

In special cases, the cost contribution can be reduced or remitted altogether. Concessions of this kind are usually made to housewives, students and pensioners, for example.

Special tables have been issued for the computation of cost contributions, and the following example shows how large a contribution an applicant can expect to pay in 1976 (depending on the number of his dependants).

Annual income	Cost contribution, Skr.	
	No dependants	Three dependants
30,600	70	70
32,000	140	70
37,000	390	70
41,000	590	70
45,300	810	80
50,000	1,070	310
60,000	1,790	810
65,000	2,290	1,100
75,000	6,130	1,840

As has already been made clear, general legal aid is provided for legal business, be it in the form of court proceedings, an administrative matter or extra-judicial business. If extra-judicial business leads to court proceedings or to procedure involving another authority, the legal aid previously awarded will also apply to the court proceedings or the administrative procedure. The legal matter involved must be fairly closely defined, but no very exacting stipulations are made in this respect. If an application for legal aid concerns more than one item of legal business, a cost contribution is payable for each item.

Certain types of legal business have been expressly excluded from the scope of general legal aid (cf infra concerning legal advice). These are matters concerning the filing of income tax returns and a number of routine matters which are normally free from complications, eg matters concerning the inventory of estates of deceased persons and the registration concerning real property.

General legal aid is also conditional on the objective need for such assistance. This criterion has been more closely defined in some of the regulations governing general legal aid benefits. As a rule the main requirement is that the applicant must be in need of assistance. If no such need can be said to apply, the practice is for applications to be dismissed where straightforward issues are involved.

Finally, for the prevention of abuses, there is a stipulation to the effect that general legal aid may not be awarded to a person who has no justifiable interest in obtaining consideration of his case. This rule implies, for instance, that legal aid can be denied a plaintiff wishing to sue for damages for a criminal offence or for libel.

#### Benefits

Basically, general legal aid implies that the State bears the full cost of the legal business concerned. Legal aid covers the following items of expense incurred by the applicant:

1. counsel (a lawyer at a public law office, a privately practising lawyer or some other assistant),
2. the production of evidence in regular courts, and the necessary investigation of matters which may be brought before such a court or to arbitration,
3. the investigation of an administrative issue, provided the investigation was reasonably necessary as a means of safeguarding the applicant's interests and could not have been obtained through the authority,

4. appearance before a court or other authority,
5. handling charges etc,
6. public notices in cases or other matters brought before regular courts,
7. certain special purposes, such as public expenditure on the translation of documents.

It is a basic rule that legal aid only covers costs arising subsequent to the award of aid, but there are certain exceptions. For example, the State will bear counsel's fees arising before the application, provided the latter was submitted without unreasonable delay and the cost involved refers to the remuneration of a lawyer or clerk at a lawyer's office.

#### Procedure

General legal aid is usually awarded by a decision of the legal aid board. The applicant completes a special application form with particulars concerning his financial circumstances. These particulars are accompanied by a solemn assurance as to their truthfulness, and a person intentionally or negligently furnishing incorrect particulars can be prosecuted. There is no rule saying that the particulars in an application must be attested, but on the other hand there is nothing to prevent a legal aid board from checking particulars which appear unreliable.

The legal aid board appoints counsel for the applicant if he so requests and is not in a position to conduct his own case. In practice, counsel is nearly always appointed. One exception to this general rule is that of disputes concerning small claims which it is to be expected will be determined under the provisions of the Act (1974: 8) concerning Procedure in Civil Actions Relating to Small Claims, ie when the amount at issue does not exceed half the base sum (Skr 4,850 in 1976). In cases of this kind, counsel may only be appointed if there are special reasons for doing so in view of the applicant's personal circumstances or the nature of the matter. This exception is due to procedure in such cases having been simplified to such an extent that a party can conduct his own case without legal counsel.

The applicant is free to choose his own counsel. He can choose either a privately practising lawyer or a lawyer from a public law office. There is no formal requirement saying that the representative must be a qualified lawyer. If the applicant nominates somebody who per se is suitable for the task, his nomination will only be overruled if it involves considerable extra expense, for instance if the nominee is resident in another area, or if there are other particular reasons for doing so. The relationship between counsel and his client is the same as if the appointment had been made on a purely private basis. Counsel's remuneration comprises a reasonable recompense for services rendered, loss of time and expenses incurred. In cases or matters coming before regular courts and certain other tribunals, counsel's remuneration is fixed by the court. Otherwise it is fixed by the legal aid board. To some extent assessment is based on centrally compiled tariffs. Thus a special tariff applies with effect from 1976 to the remuneration of counsel in divorce proceedings by joint petition. This tariff provides for a remuneration of Skr 565 in cases which are determined immediately and Skr 825 in cases where a decree absolute has been preceded by a ruling of a six-month period of consideration; cf 2.2.2., infra.

After the conclusion of the legal matter concerned, the legal aid board has to effect a definitive financial settlement. This implies a settlement of accounts with the applicant, involving the final determination of his cost contribution. A final settlement must also be made with counsel, if one has been appointed. If a party to proceedings before a regular court is awarded legal aid, an opponent obliged by law to compensate the party for legal costs must be ordered to pay the compensation to the State.

In certain circumstances the legal aid board must order the termination of general legal aid even if the matter in hand has not been determined. If this happens, the applicant himself may have to bear the expense of his legal assistance. One possible instance of this kind is that of an applicant obtaining legal aid by deceit, ie by furnishing incorrect particulars in his application.

#### 2.2.2 Legal aid to suspected persons in criminal proceedings

When the new system of legal aid was introduced, it was natural that it should be made to incorporate the previous institution of public counsel in criminal causes. The 1973 reform did not entail any radical alterations to this institution. Certain innovations were made, however, and these will now be described.

The fundamental provisions concerning public counsel are still contained by the Code of Procedure. A person suspected of a criminal offence must if necessary be assisted by public counsel during questioning or proceedings. If the accused is detained or arrested, public counsel must always be appointed when he requests it. The defence counsel who is appointed by the court, is entitled to remuneration out of public funds. Public counsel is appointed regardless of the financial circumstances of the accused.

The cost contribution system applying to general legal aid is not applied to the services of public counsel, but the system still has an indirect significance via the rules of the Code of Procedure whereby the accused has to reimburse the State for cost of his defence if he is convicted. This duty of reimbursement has been limited since 1 July 1973 to the maximum cost contribution which would have been payable by the accused in connection with general legal aid. If the financial circumstances of the accused are such that the maximum payment would have been less than Skr 75, no reimbursement is called for.

The reimbursement of public counsel is fixed according to a special tariff drawn up by the central authority for legal aid. This tariff is based on the time which can normally be expected to be spent on the public defence of an accused person in proceedings before a district court. One of the essential features of this tariff is a rate of remuneration per working hour, which is computed in a particular manner. The standard hourly rate has been Skr 175 since 1975.

Legal aid to suspected persons in criminal proceedings also includes other assistance besides the appointment of public counsel. Persons in the poorest economic circumstances ie those with annual incomes equalling less than three times the base sum (Skr 29,100 in 1976), can on certain conditions in connection with criminal court proceedings obtain compensation for such items of expenditure as the production of evidence and fares and accommodation costs in connection with appearance before the court. This facility is available to those who for purposes of general legal aid are only considered capable of paying a cost contribution equalling the basic payment, which at present is Skr 70. If convicted, the accused can be ordered to repay the cost of his legal aid on the same terms as apply to the cost of public counsel for the defence. Decisions concerning this type of legal aid are taken by the court, usually in response to a written application by the accused.

As mentioned earlier, legal aid to suspected persons in criminal proceedings is an exclusive form of legal aid within its sphere of application. Accordingly general legal aid cannot be awarded where the question arises of legal aid to a suspected person in criminal proceedings.

#### 2.2.3 Legal aid by an official assistant

Legal aid by an official assistant is predominantly a creation of the 1973 reform. This type of legal aid, which is exclusive within its sphere of application, implies the right to legal counsel in certain administrative suits and procedures. Counsel can also be appointed at the public expense to carry out certain investigations in a matter. This form of legal aid has many features in common with the institution of public counsel for the defence.

The Legal Aid Act contains an exhaustive enumeration of the matters in which an official assistant may be appointed. There are upwards of 20 such cases and matters, all of them concerning personal liberty of movement or physical privacy. These include matters concerning admission to hospital for institutional psychiatric treatment, the compulsory admission of a person to a public institution for the treatment of alcoholics, public care orders under the Child Welfare Act and the removal of an alien from the country under the Aliens Act.

In matters of the above kind, an official assistant is to be appointed if this is judged necessary in order to safeguard the interests of the person affected by the measure in question. The financial circumstances of the individual have no bearing on the appointment or non-appointment of an official assistant. The need for assistance is judged objectively according to the circumstances of the individual case. Special consideration has to be given to the occurrence of contradictory statements of fact in the course of the investigation or to the existence of important questions of fact which are otherwise unclear.

An official assistant is appointed by the legal aid board following an application by the individual concerned or in response to representations from the authority handling the matter at issue. The Act does not require any special qualifications on the part of the official assistant, but the usual practice has been for a lawyer or lawyer's clerk to be appointed.

Remuneration for the official assistant is fixed by the legal aid board. The applicant cannot be ordered to reimburse the State for the expenditure involved.

#### 2.2.4 Legal advice

Finally, legal aid can take the form of legal advice. This has been introduced to respond to the need of the general public for inexpensive legal guidance in matters of a fairly straightforward nature. The Legal Aid Act is based on the assumption that a legal aid transaction normally starts with legal advice.

Legal advice is not confined to any particular sphere of application. It is available to all physical persons, irrespective of income, and to legal persons. Advice is obtainable within all the sectors qualifying for legal aid. Matters concerning income tax returns and certain other routine business are, however, expressly excluded.

The term "legal advice" as used in the Act denotes a short consultation or comparable measure in a legal matter. As a rule of thumb, this is taken to imply a consultation lasting between 20 and 25 minutes. The client pays an



index-adjusted flat rate for the consultation: at present (1976) this payment stands at Skr 70, and it corresponds to the basic payment for general legal aid. The charge may be reduced or dispensed with in special circumstances. The conditions applying in this respect are the same as for the reduction or remission of the basic payment for general legal aid. In the event of a reduction or remission being granted, the difference is paid to the lawyer out of public funds.

If legal advice leads to general legal aid, the cost of the advice is included as an item of cost for the purposes of general legal aid. If the client has paid a consultation fee, this is deducted from his cost contribution.

## 2.3 Organisation

### 2.3.1 The public law offices

One of the salient features of the new legal aid system is the service provided by the State through the public law offices. As mentioned earlier, when the reform came into effect, the 16 pre-existing legal aid offices, most of which were municipally sponsored, were converted into public law offices. Since then a further 14 offices have been opened, so that there are now 30 State law offices in the country altogether.

Business at these public law offices is conducted on the same lines as in the legal profession generally. They have no monopoly status or other privileges, and they compete on equal terms with private firms of lawyers. Their activities are supposed to be self-financing.

Formally speaking, the public law offices are national authorities and as such they come under the regulations generally applying to national authorities. However, they occupy a special position in several respects. The provisions of the Act concerning Administrative Procedure (1971: 290) do not apply to the activities of the law offices, which instead are subject to the same rules of professional conduct as apply to privately practising lawyers. Lawyers at public law offices come under the supervision and disciplinary authority of the Swedish Law Society, though at the same time, as public servants, they also come under the penalty provisions of the Criminal Code and the State Officials Act (1965: 274). Special rules apply to the public law offices with respect to professional secrecy.

Although in principle the activities of the public law offices are thus to be conducted on the same lines as legal business generally, there are certain differences between the public and private sectors of the legal profession. Among other things, the public law offices were set up to cater for the increased demand for legal services that was expected to result from the introduction of the new legal aid scheme and which could not have been met with the resources then available. Thus the scope of these activities was a foregone conclusion. The main task of the public law offices is to furnish legal advice and counsel under the legal aid scheme, but they are also free to accept briefs outside this sector if they can do so without detriment to their activities under the Legal Aid Act. If a public law office accepts a brief not qualifying for legal assistance, the fee charged must still be gauged according to the rates fixed for counsel's remuneration under the Legal Aid Act.

In other respects too, there are certain differences in the business undertaken by public law offices and private lawyers. Private lawyers are under no obligation to furnish legal aid or advice under the legal aid scheme. Legal aid of this kind is only given if the lawyer or his assistant is prepared to give it and is requested to do so by the client. In the case of public law offices, any legal advice which is given must be given according to the provisions of the Legal Aid Act. Similarly public law offices must always provide counsel under the legal aid scheme for a client who is entitled to general legal aid.

As mentioned above, the earnings of the public law offices are supposed to cover their costs. Earnings for the fiscal year 1974/75 were approximately Skr 20 m, while costs totalled about Skr 25 m, giving 81 per cent coverage of costs. The figure including the accumulated proceeds of business not yet invoiced was roughly 87 per cent. Cost coverage has been lowest at the newly opened public law offices.

### 2.3.2 The legal aid boards

The administrative side of legal aid is managed on a regional basis by six legal aid boards. In principle the legal aid boards are responsible for the management of all legal aid, which means that the fundamental decisions under the Legal Aid Act rest with them. Certain matters concerning legal aid have, however, been divorced from their jurisdiction and transferred to other authorities, particularly the regular courts. This applies, for instance, to the determination of remuneration for counsel appointed by the legal aid board in a case or matter before a regular court, and also to the appointment of defence counsel in criminal proceedings and to the determination of remuneration for such counsel.

A legal aid board must comprise a Chairman, who is to be a qualified lawyer with judicial experience, and four other members. Of these other four members, two must be practising lawyers, one of them being employed at a public law office and the other privately active. The remaining two members must be Swedish subjects, resident within the board's area of jurisdiction and not under any legal disability.

There are legal aid boards in Stockholm, Jönköping, Malmö, Gothenburg, Sundsvall and Umeå. During the fiscal year 1973/74, the legal aid boards handled nearly 100,000 applications for legal aid. The number of applications received during the following fiscal year, 1974/75, was limited to about 81,500. The main reason for the decline was probably the new matrimonial legislation which came into force on 1 January 1974 and which abolished judicial separation. Until then, petitions for judicial separation and divorce suits normally occasioned separate applications to the legal aid boards.

The personnel strength of the legal aid boards for the fiscal year 1975/76 comprises 21 handling officers and 63 assistants.

### 2.3.3 The central authority

As stated earlier, the Authority of the Judiciary Administration set up on 1 July 1975 is the central authority in charge of legal aid.

One of the general duties of the central authority within the legal aid scheme is to observe the implementation of the 1973 reform and to ensure that it has the intended effect. It is also the task of the central authority to forecast expenditure under the legal aid scheme and to request the monies required. The central authority determines the remuneration rates for counsel under the Legal Aid Act and for public counsel. Other duties of a more general nature include those connected with the cost contribution system, such as the issue of maximum contribution tables.

The central authority is responsible for the direction and co-ordination of activities under the legal aid scheme. Administratively speaking, the public law offices come under its supervision and are bound by the regulations which it issues. However, this supervision is confined to administrative matters and does not affect the specific business activities. It is the task

of the central authority to issue the legal aid boards with instructions and directions to ensure the correct and uniform implementation of the law governing this sector. The central authority is also responsible for the administrative planning and co-ordination of the activities of the boards.

The central authority also acts as a court of appeal for matters in which appeals can be lodged against the decisions of a legal aid board or some other administrative authority under the Legal Aid Act. To this end the Authority of the Judiciary Administration incorporates a special Appeals Committee.

#### 2.4 Structure of business

The following particulars will provide some indication of public demand for the various forms of legal aid.

During the fiscal year 1973/74, the number of cases involving general legal aid following a decision by a legal aid board totalled 98,051. In 82 per cent of the cases where legal aid was awarded, the cost contribution was fixed at the maximum basic charge, which at that time was Skr 60. In 41 per cent of these cases the contribution was dispensed with entirely. In 9 per cent the charge payable by the applicant exceeded Skr 300.

Turning to the nature of legal business, almost 70 per cent of the cases concerned issues of family law. Divorce proceedings accounted for 54 per cent. Another large group (11 per cent) comprised actions for damages.

Of the concluded cases for which general legal aid had been granted, 72.5 per cent had been dealt with by a regular court of law, 2.5 per cent by an administrative authority and/or an administrative tribunal and 24 per cent had been settled out of court.

Counsel had been engaged from public law offices in 30 per cent of cases and from private firms of lawyers in 63 per cent, while other persons had been engaged in 7 per cent of cases. A comparison of the category of counsel and the type of business involved showed that 81 per cent of the cases in which counsel came from a public law office were matters of family law. The corresponding figure for privately practising lawyers was 65 per cent.

During the fiscal year 1973/74, legal aid by an official assistant was requested in 986 cases. Of these, 5.5 per cent concerned institutional mental care, 11 per cent concerned the treatment of alcoholics and 19 per cent were concerned with child care. Over 50 per cent of the applications received referred to matters coming under immigrant and alien legislation.

Public defence counsel was appointed in over 28,000 criminal cases in 1974. During the first half of 1974, other forms of legal aid for suspected persons in criminal proceedings were awarded to 405 persons.

Legal advice was granted to some 25,000 persons during the fiscal year 1973/74. The consultation charge was reduced or remitted altogether in 12,300 of these cases.

#### 2.5 Expenditure

Needless to say, the new system of legal aid has generated considerable public expenditure. Total expenditure for 1975 has been estimated at almost Skr 120 m. Expenditure on the various forms of legal aid is forecast at the following amounts.

General legal aid	Skr 66,268,000
Legal aid to suspected persons in criminal proceedings	36,397,000
Legal aid by public defence counsel	590,000
Legal advice	895,000

#### 3. INFORMATION CONCERNING THE LEGAL AID SYSTEM

One of the important questions connected with the implementation of the reform of legal aid was the measures to be taken by public authorities in order to give the general public the best possible information concerning the reform. During the first year after the reform came into effect, the central authority mounted a campaign which comprised both nationwide information and local information via the public law offices concerning the new system.

Nationwide information was primarily aimed at the general public. Inaccessible groups were informed via municipal social welfare offices, public insurance offices, employment offices and immigrant service bureaux. Information was also aimed at various sectors of the judiciary system, eg court personnel and lawyers. Finally information was conveyed to "interest organisations" of various kinds including the trade unions. The media employed were printed brochures describing the legal aid system (an edition of one million copies was distributed), newspaper advertising and radio and television spots.

The information channelled through the public law offices resembled that distributed at national level, but the law offices were bound in their marketing activities by the same rules of professional conduct as apply to privately practising lawyers, eg concerning the permissibility of advertising their activities by distributing brochures and suchlike.

#### 4. FUTURE PROSPECTS

By way of conclusion it should be noted that in 1975 the Swedish Government appointed a special Commission to review the legal aid system. The work of this Commission is aimed at improving the adjustment of public legal aid facilities to the needs of clients. Above all, the various forms of legal aid are to be made more efficient. Steeply rising costs demand the greatest possible simplification of legal aid procedure. Among other things, consideration will be given to the possibilities of more extensive use being made of the institution of legal advice.

A P P E N D I X VII

SWITZERLAND

Regulations of the Legal Advice and Assistance  
Office of the Bar Association

Name

Article 1

There shall operate under the title "Legal Advice and Assistance Office of the Bar Association" in conjunction with the Social Information Office (SIO) throughout the day at 13 rue Verdaine, Geneva a law centre established by the Bar Association to provide legal advice and assistance.

Aims

Article 2

The aims of the office are:

- to give on the spot legal assistance;
- to provide applicants with the assistance and advice of a lawyer;
- to help those who may qualify for it to obtain legal aid;
- to direct applicants to the offices of the competent administrative or social services;
- to co-operate with the cantonal social services and particularly their legal departments;
- to open as required legal advice offices in suburban districts.

General  
Organisation

Article 3

3.1 The office shall be managed by a lawyer, with the assistance of a legally qualified secretary. Under a rota system, members of the Bar Association shall be available at the office to give advice at all times, and especially between midday and 2 pm, in the evenings and on Saturdays. First-year trainee lawyers shall not take part in the scheme.

Management

3.2 The legal director of the office shall be responsible for:

- the administrative and legal management of the office;

- interviewing applicants during normal opening hours;
- providing legal advice at the office, and in case of urgent need, assisting clients in court;
- maintaining the files and keeping them up to date;
- keeping up to date the list of consultant lawyers and sending them notice to attend for duty;
- checking the attendance list of consultant lawyers;
- the fair distribution among members of the Bar Association of cases which cannot be dealt with on the spot;
- checking the bills submitted for payment;
- keeping the office's accounts, payment of expenses and collection of the consultation fees;
- maintaining contacts with the canton's social services and their legal departments;
- arranging co-operation between social service lawyers;
- providing a replacement in case he is absent, on holiday, or when performing military service.

Legal Secretary

3.3 The legal secretary shall:

- be responsible for the office's Secretariat and administration;
- replace the director in his absence;
- maintain contact with the social workers in the SIO;
- perform any other duty entrusted to him by the legal director.

Consultant lawyers

3.4 The consultant lawyers shall:

- co-operate with the legal director to ensure the smooth running of the office in his absence;
- report to the director on the applicants they interview and cases dealt with;

- if necessary, continue to deal with the case of applicants they see in the office, with their agreement and with that of the director.

#### Opening hours

3.5 The office shall be open from 8.30 am to 9 pm from Monday to Friday, and also from 9 am to midday on Saturday mornings.

#### Liability

##### Article 4

The legal director of the office and the consultant lawyers act on their own responsibility, and the trainee lawyers under that of their supervisors.

The Bar Association shall, at its expense, insure against the professional liability of the director, the legal secretary and all lawyers giving advice on the office premises.

Lawyers chosen by applicants shall be responsible for cases dealt with outside the office. The supervisors shall be liable for their trainees.

#### Supervision

##### Article 5

The activity of the office shall be placed under the supervision of a five-member committee appointed by the Bar Council.

#### Consultation charges and fees

##### Article 6

###### 6.1 Clients qualifying for legal aid

The director himself shall take the necessary steps to facilitate and expedite the grant of legal aid, whether the case is taken by the office or referred to a member of the Bar.

###### 6.2 Consultations in the office

The charge is 25 francs per consultation. The director or consultant lawyer may, however, waive his fee.

###### 6.3 Consultations outside the office

Reduced fees will be charged to clients who do not qualify for legal aid whose annual taxable income is below the following limits:

- single person: 18,000 F.
- couple: 25,000 F.

These limits shall be increased by 3,500 F per dependent child up to the age of 10 and by 4,500 F per dependent child up to the age of 18.

Proof of income shall be provided by means of the previous year's tax assessment.

The reduction in fees may be as much as 50% of the normal fees, depending on the particular circumstances of the client.

Lawyers giving their services to clients of the office undertake to apply these regulations and to keep their fees within the set limits. They will inform the client of this regulation at his first visit.

Fees may, however, be increased whenever justified by the amounts recovered for the client.

LEGAL ADVICE AND ASSISTANCE  
OFFICE OF THE BAR ASSOCIATION

I. Reasons for establishing the office

1. The lawyer is the natural ally of the ordinary citizen. Effective justice requires that the general public should be able to obtain advice from a free and independent lawyer as easily as possible.
2. The low profitability of small and average cases is largely the consequence of an archaic legal system and inadequate rationalisation of the lawyer's working methods. Neither the courts nor members of the Bar have kept pace with economic development. The result is that lawyers' services have become relatively expensive and this has led large sections of the population not to have recourse to the law or its institutions for an increasing proportion of their disputes and legal problems.
3. The legislative explosion which we are now witnessing, particularly in the field of public law, worries the ordinary man and too frequently forces him to seek inexperienced advice or, and this is more serious, to demand that the State itself give legal advice, or even represent him in court.
4. The present system of legal aid is extremely slow, suffers from a number of gaps, and does not apply to legal advice as such. Although it is about to be reformed, it must be supplemented by diversifying the available means of assistance.
5. If lawyers are not imaginative enough to provide everybody with the necessary legal assistance, there is a danger that sooner or later the State and the great trading corporations will take over with the result that the lawyer will lose his freedom and independence and become a mere civil servant or employee. But as we know the law can only be properly served by lawyers who are free and independent.
6. A man of modest means will often forego the services of a lawyer because he is not aware of the need to defend his rights and apprehensive about the cost. This means we must inform the public, anticipate their needs, provide them with a law centre, give them advice and guidance and organise their legal assistance.

II. Name

The Law Centre will be known as "Legal Advice and Assistance Office of the Bar Association". The name "Law Centre" is already widely known in Geneva, where it has taken on a special and popular meaning ie an office open to the public outside normal working hours, access to which is easy and does not require an appointment. This Law Centre is named by the "bar" and is not connected with the State or any other official or private organisation. Furthermore, it involves a collective effort by members of the Bar.

III. Premises

The Law Centre must have its own premises, with its own telephone number and name-plate, in the immediate vicinity of the law courts and if possible close to a social services office so that all the social problems connected with the legal questions raised by the Law Centre's prospective clients may be solved at once in co-operation with the existing social services.

The Hospice Général has offered premises at 13 rue Verdaine in the Social Information Office (SIO) building. The services of the SIO receptionist and the general waiting room will also be available.

IV. Activities

Inquiries at the Protestant Welfare Centre, Caritas and the Social Information Office, have revealed the following information:

- Problems which can be solved immediately without taking any special steps

About a third of the legal queries can be settled on the spot by a simple answer eg questions on the rights of the person who has signed a hire-purchase agreement, who has just received a formal demand for payment, who wishes to have the meaning of the clauses in an insurance policy explained, who wants to know his rights in a deceased's estate, who wants to know the meaning of clauses in a contract etc;

- Problems which can be settled by taking some simple action

One third of the cases may be settled by means of a letter, or by telephoning the competent authority;

- Problems requiring a more complicated procedure

Finally, a third of the cases require administrative or legal proceedings or some other longer and more complicated procedure.

- Nature of cases

For the most part the cases dealt with concern family law (marital difficulties, maintenance, custody of children), the law of obligations (hire purchase), inheritance (inheritance rights, steps to be taken at death, possibly, drafting of wills) and insurance law (consequences of an accident, loss or damage, obtaining old-age, survivors' or disability insurance payments or cantonal old-age benefits). There follow in that order labour law disputes and problems concerning landlords and tenants.

It is not our intention to set up an office of lawyers specialising in low-cost litigation. The main object is to offer ordinary people, and particularly the least prosperous immediate legal assistance, whether it be at the Law Centre or in a lawyer's office. The further object is to obtain a collective effort from the whole Bar.

The function of the Law Centre is firstly to answer queries on the spot and secondly to refer applicants elsewhere for further assistance.

Thus the Law Centre must settle on the spot all legal questions which can be settled immediately including, if need be, those in which some simple step requires to be taken. All other cases will be referred to members of the Bar after telephoning to ensure that the client will be well received without having to wait.

In addition, any social problems connected with the legal questions raised by clients of the Centre will be dealt with immediately by the Social Information Office and its specialised departments.

#### V. Internal organisation

Two solutions were proposed: to appoint one or more full-time staff, or as is the practice in other cantons and other countries, to organise a roster of the members of the Bar Association and more especially the younger members of the Bar who would give their services free of charge. On reflection, the ideal solution seemed to be to combine both methods by engaging one lady or gentleman to take charge of the Centre on a permanent basis and making available voluntarily and free of charge the services of members of the Bar (or at least all those who agreed to participate in the scheme, which the Commission thinks would be of particular interest to the younger members). Lawyers taking part would serve on a rota system particularly between midday and 2 pm, and from 5 pm to 9 pm in the evenings.

The Law Centre would thus be under the direction of a qualified lawyer. The post would particularly suit a woman. He or she would be responsible for interviewing clients during the day, settling their problems on the spot, the administration of the Centre, maintaining contact with members of the Bar and managing the roster of consultant lawyers. He would be paid by the Bar Association and supervised by a standing committee of the Bar Council.

A list of consultant lawyers will be drawn up. About 100 have already registered. They will keep the clients who come to them in this way if the questions raised require any special steps to be taken, or possibly the institution of proceedings, but will submit a brief report to the director on the clients they interview and the advice given.

#### VI. Participation by members of the Bar Association

The work involved in operating the Law Centre should not be furnished by a few volunteers but constitute the joint effort of all the members of the Bar Association.

After a circular has been sent to all members of the Bar Association, a list of lawyers willing to participate in the scheme will be drawn up. This list will indicate, for each lawyer, the languages he speaks and one or more fields of law in which his knowledge and experience render him particularly fit to advise prospective clients.

The director will then be responsible for referring the Centre's clients to these lawyers as fairly as possible, subject to the client's own choice, if he expresses an opinion.

#### VII. Financing

The question arose whether the Centre's services should be free or whether a small charge should be made. We came to the conclusion that for psychological reasons and in the interests of sound administration, it was desirable to make a modest charge for interviews at the Centre eg 20-30 F plus expenses. The director would be empowered to reduce the fee or even to waive it in deserving cases.

The Centre will also be subsidised by the Bar Association.

A longer term plan is the possible creation of an endowment fund and the publication and sale of simple legal booklets providing information on certain subjects which in the experience of the legal department of the Protestant Welfare Centre and Caritas, the public need to be regularly informed of its rights and duties in easily understandable terms (eg leases, hire-purchase etc).

Members of the Bar Association to whom the Centre's clients are sent should arrange with the director to apply a more or less uniform scale of fees, unless the client qualified at once for legal aid or assistance.

#### VIII. Reaction of the social welfare organisations

The various welfare organisations contacted, such as the SIO, Caritas and the Protestant Welfare Centre, as well as the Consumers' Federation of French-speaking Switzerland, have reacted very favourably to the plan to establish the Bar Association's Law Centre, considering that it was after all the particular responsibility of members of the Bar to provide legal advice in the city, which their various social services had provided only as a sideline in order to fill a gap.

The above-mentioned organisations have asked to be associated with the Law Centre and have promised their wholehearted co-operation.

The Law Centre has thus given all lawyers the opportunity to affirm their duty towards society and to provide a service to justice and the ordinary citizen in his contacts with the law.

APPENDIX VIII

UNITED KINGDOM

A. Analysis of accepted offers of legal aid certificates received by the Law Society Accounts Department during the year 1975/1976

Area (1)	Appellate cases					High Court (excluding matrimonial proceedings) /See Note (1)/				High Court and County Court matrimonial proceedings (11)	County Court cases (excluding matrimonial proceedings) (12)	Magistrates Courts (civil family proceedings) (13)	Miscellaneous (14)	Grand Total (15)
	House of Lords (2)	Court of Appeal (3)	Family Division (4)	Other Courts (5)	Total Appellate cases (6)	Chancery Division (7)	Queen's Bench Division (8)	Miscellaneous (9)	Total High Court Cases (10)					
No. 2 South Eastern	2	21	37	19	79	163	1,445	151	1,759	10,597	810	3,637	-	16,882
No. 3 Southern ...	1	28	31	18	78	157	1,299	125	1,581	9,525	868	3,621	-	15,673
No. 4 South Western	2	34	25	34	95	165	988	103	1,256	9,693	1,385	3,816	3	16,248
No. 5 South Wales	-	10	6	16	32	42	887	37	966	5,939	612	3,046	-	10,595
No. 6 West Midlands	1	13	34	37	85	120	1,191	64	1,375	10,857	871	6,814	-	20,002
No. 7 North Western	1	9	31	46	87	126	1,530	80	1,736	10,029	1,005	9,294	4	22,155
No. 8 Northern ...	-	19	34	18	71	62	979	64	1,105	6,338	140	5,598	3	13,255
No. 9 North Eastern	1	12	25	29	67	59	1,023	62	1,144	8,951	458	9,510	-	20,130
No. 10 East Midlands	-	9	16	31	56	102	1,083	74	1,259	8,490	398	5,492	-	15,695
No. 11 Eastern ....	-	16	31	21	68	119	1,357	154	1,630	10,763	711	3,241	-	16,413
No. 12 Chester and N. Wales ....	-	5	5	21	31	30	413	20	463	3,199	116	1,809	-	5,618
No. 13 London (East)	2	46	17	14	79	151	1,168	222	1,541	6,803	1,003	2,252	-	11,678
No. 14 London (West)	4	40	28	22	94	186	1,192	269	1,647	7,312	1,120	2,407	2	12,582
No. 15 Merseyside ..	3	11	18	32	64	45	599	56	700	6,129	1,068	3,090	-	11,051
T O T A L S .....	17	273	338	358	986	1,527	15,154	1,481	18,162	114,625	10,565	63,627	12	207,977 (2)
T O T A L S 1974/1975	15	296	337	227	875	1,346	14,960	569	16,875	106,255	8,093	68,234	24	200,356 (2)

NOTES :

- (1) In some of these cases proceedings may be issued in the County Court.
- (2) The difference between this total and the sum of the totals of columns 5 of Appendices 1 and 2 is due to the lapse of time between the acceptance of the offer of a certificate and its issue.

B. Average cost of legal aid bills paid from 1971/72 to 1975/76

High Court and County Court matrimonial proceedings	Amount £	% change
1971/72	129	
1972/73	123	- 4.7
1973/74	138	+12.2
1974/75	153	+10.9
1975/76	182	+18.9
High Court - Non matrimonial proceedings		
1971/72	251	
1972/73	268	+ 6.8
1973/74	298	+11.2
1974/75	338	+13.4
1975/76	402	+18.9
County Court - Non matrimonial proceedings		
1971/72	90	
1972/73	97	+ 7.8
1973/74	107	+10.3
1974/75	119	+11.2
1975/76	146	+22.7
Magistrates' Courts - Civil proceedings		
1971/72	30	
1972/73	33	+10.0
1973/74	38	+15.2
1974/75	44	+15.8
1975/76	52	+18.2
Magistrates' Courts - Criminal proceedings		
1971/72	33	
1972/73	37	+12.1
1973/74	45	+21.6
1974/75	55	+22.2
1975/76	67	+21.8
Legal advice and assistance		
1973/74	13	
1974/75	15	+15.4
1975/76	18	+20.0

N O T E:

These figures reflect the average cost of cases tried, settled and otherwise disposed of. Each figure includes the average amount of counsel's fees and disbursements where appropriate.



C. Statement showing the total cost of the scheme for each of the last Five Years

	1971/72			1972/73			1973/74			1974/75			1975/76		
	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£
<b>A. ADMINISTRATION</b>															
Expenditure... ..		3,455,192			3,698,863			4,094,966			5,057,864			6,430,116	
Less: Miscellaneous receipts		44,684			242,266			23,183			25,012			27,731	
		<u>3,410,508</u>			<u>3,456,597</u>			<u>4,071,783</u>			<u>5,032,852</u>			<u>6,402,385</u>	
<b>B. LEGAL AID - CIVIL CASES</b>															
(i) Expenditure... ..		13,945,040			17,086,210			17,659,620			21,526,873			26,949,311	
Less: Contributions retained	2,353,757			2,713,953			2,888,074			3,646,798			3,856,556		
Costs recovered ...	3,883,549			4,249,116			4,592,073			5,126,733			6,266,762		
Damages retained ...	174,374			276,439			300,469			612,117			534,913		
Miscellaneous receipts	4,098			4,309			9,178			20,383			76,388		
		<u>6,415,778</u>			<u>7,243,817</u>			<u>7,789,794</u>			<u>9,406,591</u>			<u>10,734,619</u>	
(ii) Costs of successful unassisted parties ...		7,529,262			9,842,393			9,869,826			12,120,282			16,214,692	
		5,324			10,243			14,834			19,304			43,976	
<b>C. LEGAL AID - CRIMINAL CASES IN MAGISTRATES' COURTS</b>															
Expenditure... ..		3,379,303			4,363,781			6,209,283			9,445,297			14,371,413	
Less: Contributions received	197,730			175,175			221,198			380,311			452,109		
Costs recovered	481			1,339			2,734			2,385			7,857		
		<u>198,211</u>			<u>176,514</u>			<u>223,932</u>			<u>382,696</u>			<u>459,966</u>	
		3,181,092			4,187,267			5,985,351			9,062,601			13,911,417	
<b>D. LEGAL ADVICE AND ASSISTANCE</b>															
Expenditure... ..		482,566			461,941			1,355,328*			2,783,868*			4,451,623	
Less: Fees... ..		5,568			5,373			49,446*			111,216*			170,337	
		<u>476,998</u>			<u>456,568</u>			<u>1,305,882*</u>			<u>2,672,652*</u>			<u>4,281,086</u>	
<b>TOTAL COST OF THE SCHEME ...</b>		<u>£14,603,184</u>			<u>£17,953,068</u>			<u>£21,247,676</u>			<u>£28,907,691</u>			<u>£40,853,586</u>	
		=====			=====			=====			=====			=====	
<b>GRANT - Per Account ...</b>		14,630,000			18,150,000			21,370,000			29,290,000			41,025,000	
<b>Add: Balance at beginning of year ...</b>		195,744			222,560			419,492			541,816			924,125	
		<u>14,825,744</u>			<u>18,372,560</u>			<u>21,789,492</u>			<u>29,831,816</u>			<u>41,949,125</u>	
<b>Less: Balance at end of year</b>		222,560			419,492			541,816			924,125			1,095,539	
<b>TOTAL CASH ...</b>		<u>£14,603,184</u>			<u>£17,953,068</u>			<u>£21,247,676</u>			<u>£28,907,691</u>			<u>£40,853,586</u>	
		=====			=====			=====			=====			=====	

\* These figures relate to advice and assistance under both section 7 of the Legal Aid and Advice Act 1949 and the Legal Aid Act 1974

D. Consolidated figures for the last twenty-six years

Total number of applications received .....	3,483,689
Total number of certificates issued .....	2,389,402
Total number of results reported .....	1,633,105
Total number of successful cases .....	1,427,523
Total number of cases closed when all financial matters are concluded .....	1,980,437
Total amount of grant received .....	£ 202,298,000
Total amount of contributions received .....	£ 44,683,000
Total amount of contributions retained .....	£ 23,542,000
Total amount of costs recoved .....	£ 51,971,000
Total amount of damages recoved .....	£ 194,077,000

END