



## British Embassy Vienna

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### AUSTRIA

#### LEGAL AID

1. The Austrian Government introduced a system in the 70's for assisting persons of small or moderate means by providing legal aid in civil and criminal litigation.
2. Legal aid consists in the remission of court fees, deposits and similar charges on the one hand and of gratuitous representation by a lawyer on the other.
3. A person is entitled to legal aid in a proceeding, if on account of his resources and domestic commitments he cannot, without endangering his livelihood, bear the cost of litigation and such litigation does not appear to be manifestly frivolous or without a chance of success. The prosecution of a claim would certainly be regarded as frivolous if, having regard to all circumstances, in particular the solvency of the party opposing the claim, a reasonable person who is not entitled to legal aid would not have brought the action. A foreign national will be granted legal aid only subject to reciprocity on the part of his country. This is to say that an Austrian national involved in, or contemplating the institution of proceedings in the foreign country concerned, must be entitled to legal aid in that country to the extent to which Austria makes legal aid available to a party in Austria ("Material" Reciprocity). Gratuitous representation by a lawyer is granted in cases where such representation is either mandatory or appears necessary in view of the complexity of the subject matter.
4. It is conceivable that in the light of the applicant's financial circumstances, only remission of some of the court fees will be granted (partial aid).
5. Applications for legal assistance must be submitted to the civil court of first instance. The application must be accompanied by an affidavit specifying all details regarding the applicant's financial position and family commitments.

6. The assisted party may subsequently be ordered to repay remitted court fees and to remunerate his lawyer if, and to the extent to which his financial circumstances have undergone a change, permitting him to make such payment without endangering his livelihood. No order for payment may be made after the lapse of three years from the end of the proceedings in which the party received legal aid. Where a person, by order of the court, becomes entitled to gratuitous representation by a lawyer, the latter is appointed by the local Chamber of Lawyers. The assisted party is not entitled to make the selection himself. Where a person receives legal aid and loses the case, the successful party is entitled to claim from the assisted person such legal costs as he may have incurred in the course of the litigation.
  
7. A person is entitled to gratuitous representation by a lawyer in a criminal proceeding in a magistrates' court (Bezirksgericht) if, on account of his resources and domestic commitment, he cannot, without endangering his livelihood, bear the cost of his defence if and to the extent to which the interests of justice, and in particular the interests of the defendant, require such representation. This will, in particular, be the case in so far as the preparation of an appeal, the complaint against an indictment, the trial itself and the determination in open court of an appeal are concerned. There are instances where representation by a lawyer is even mandatory, eg where an offence is punishable by a term of imprisonment of more than five years. Juvenile delinquents (ie persons over the age of 14 and below the age of 18) are entitled to gratuitous representation by a lawyer, even if they are charged with an offence which is tried in a magistrates' court (Bezirksgericht), provided that such representation is necessary and the juvenile or his parents (Guardians) are not in a position to bear the cost of his defence.
  
8. The Anglo/Austrian Legal Aid Convention of 31 March 1931, in Article II, accords national treatment of citizens of the United Kingdom as regards legal aid in the field of civil proceedings.