

The Danish Administration of Justice Act (extracts)

Consolidated Act no. 1069 of 6 November 2008

Part 30 – Legal costs

311.-(1) A party must initially pay the costs incurred by taking legal steps, which such party has made or requested be made.

(2) The court may upon the request of a party, who under subsection 1 must initially pay costs of an expert opinion or other costs, decide that the counterparty must initially pay a part of the costs if the counterparty's questions to the expert etc. have significantly contributed to increasing the costs.

(3) The court decides in which proportions the parties must initially pay the costs incurred by taking legal steps, which the court orders at its own initiative.

(4) If a party is not represented by legal counsel, the court may make the initiation of legal steps conditional upon such party providing security, the nature and size of which is laid down by the court.

312.-(1) The losing party must compensate the counterparty for the costs incurred on the counterparty, unless the parties have agreed otherwise.

(2) However, the court may decide that the losing party must not or only partly compensate the counterparty for costs incurred, if special reasons speak for it.

(3) If the losing party has offered the counterparty what is due to him, the counterparty must compensate the losing party the costs of the subsequent part of the process. The provisions of subsection 2 equally apply.

(4) When a case is dismissed, it is in respect of the legal costs considered as lost on the part of the plaintiff.

(5) The party, who upon appeal does not obtain any change by the appeal decision, is in respect of the legal costs considered the losing party.

(6) As for the cases dealt with in parts 42, 42a, 43, 43a and 43b hereof, no party shall pay legal costs to the other party. However, the court may order a party to pay legal costs if special reasons speak for it.

313.-(1) When each of the parties for one part lose and for one part win the case, the court will order one of the party's to pay partial legal costs to the counterparty or decide that none of the parties must pay legal costs to the counterparty.

(2) However, the court may order one of the parties to pay all legal costs to the counterparty, if the counterparty's claim only to an insignificant extent deviates from the outcome of the case and if such deviation has not entailed any separate costs.

314.-(1) When a case is dismissed, the court may order one of the parties to pay all or partial legal costs of the case to the counterparty or may decide that none of the parties must pay any legal costs to the counterparty.

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315.-(1) If by appeal no change of the appeal decision is obtained, sections 312-314 apply with respect to the costs of the appeal case and the costs of the prior hearing of the case, if a decision in this respect is to be made.

316.-(1) The legal costs that can be compensated are those costs, which have been necessary for the proper conduct of the case. Costs for legal counsel or assistance from a person, who in pursuance of section 260(5), commercially, or in pursuance of section 260(6), represents a party, are compensated with a suitable amount, and other costs are fully compensated.

(2) Legal costs are not necessarily awarded in full or as per account rendered.

317.-(1) Joint parties are jointly and severally liable for legal costs. However, the court may, if the circumstances speak for it, order one party or some of the parties to defray certain parts of the costs.

318.-(1) The party, who has irresponsibly brought about wasted meetings, unnecessary delays, futile production of evidence or other unnecessary procedural steps, also if the party wins the case, must compensate the counterparty for the costs in this respect.

319.-(1) Lawyers and other legal representatives may if the counterparty so claims, during the case be ordered to pay the costs, which they have caused contrary to their duty.

320.-(1) The court may decide that the state treasury must reimburse the costs, which have been incurred on a party without its fault as a result of the case having to be retried wholly or in part, or because the case could not be heard.

321.-(1) A plaintiff who does not have residence or domicile within the European Economic Area must upon the defendant's request provide security for legal costs, which the plaintiff may be ordered to pay to the defendant. The defendant's request must be stated in the statement of defence or be mentioned at the court hearing pursuant to section 352(3). The nature and size of the security is laid down by the court, and the court may also decide exemptions from providing security, if special reasons speak for it. If the security is not provided, the case will be dismissed.

(2) Subsection 1 does not apply, if the plaintiff has residence or domicile in a country in which a plaintiff, who has residence or domicile in Denmark is exempted from providing security for legal costs.

322.-(1) The court decides the legal costs even though no claim is made in this respect, cf. however section 319.

Part 31 – Legal aid and free legal aid

323.-(1) The Minister of Justice grants legal assistance from lawyers providing legal aid in the form of basic oral advice (step 1). The Minister of Justice further grants legal assistance from lawyers providing advice beyond the basic oral advice (step 2) and advice in connection with settlement negotiations (step 3).

(2) Any party is entitled to free legal aid at step 1 regarding any legal queries.

(3) Anyone who meets the financial requirements under section 325 is entitled to partial free legal aid at step 2, cf. however subsection 4 below. When a dispute arises and it is assessed that the case may be settled if further assistance is provided by a lawyer, such party is in addition entitled to free legal aid at step 3.

(4) Legal aid at steps 2 and 3 is not granted to

- 1) suspects or defendants in public criminal cases,
- 2) active business owners' cases of predominantly commercial nature.

3) cases regarding rescheduling of debt or

4) cases regarding or cases that are being treated by an administrative authority or a private complaints board or appeals committee approved by the Minister of Family and Consumer Affairs.

(5) Notwithstanding subsection 4, 4, legal aid may be granted at steps 2 and 3 in connection with a complaint over a decision of an administrative authority.

(6) The fee for lawyers for legal aid at step 2 amounts to DKK 800 (2005 level) incl. of VAT of which the state treasury pays 75%. The fee for lawyers for legal aid at step 3 amounts to DKK 1,830 (2005 level) incl. of VAT of which the state treasury pays half. The state treasury pays the entire fee for legal aid in connection with an application for free legal aid. Payments from the state treasury only comprise fees that are not covered by legal expenses insurance or other type of insurance.

(7) The Minister of Justice fixes the rules for granting legal aid, including the extent of the legal aid at steps 1, 2 and 3. The Minister of Justice lays down the rules for granting legal aid, including the calculation and payment of the aid.

324.-(1) The Minister of Justice may from the state treasury grant contributions to law centres. The Minister of Justice fixes the rules for the calculation and payment of the contribution.

325.-(1) Upon application a person meeting the financial conditions under subsections 2-5 below and who has no legal expenses insurance or other type of insurance that cover the costs of the case, may be granted free legal aid under the rules of sections 327 and 328.

(2) A person, whose income base does not exceed the amounts mentioned in subsections 3-5 below, meets the financial conditions for obtaining free legal aid, unless the costs of the case are deemed to be insignificant in relation to the applicant's income base. The Minister of Justice lays down the rules for calculation of the income base.

(3) The income limit is DKK 236,000 (2005 level) for singles.

(4) For cohabitants the couple's total income base is applied and the income limit is DKK 300,000 (2005 level). If the couple has opposing interests in the case, the applicant's own income base and the income limit for singles are applied.

(5) The income limit is increased by DKK 41,000 (2005 level) for each child under the age of 18, including step children or foster children, who live with the applicant or who predominantly are dependant on him/her.

326.-(1) The amounts stated in sections 323(6) and 325(3)-(5) are adjusted annually as per 1 January with 2.0% with the addition or deduction of the adjustment percentage for the financial year in question; cf. the Danish Act on Rate Regulation Percentage. The adjusted amounts under section 323(6) are rounded off to the nearest whole figure, which is dividable by 10. The adjusted amount under section 325(3)-(5) is rounded off to the nearest whole figure, which is dividable by 1,000. The adjustment takes place on the basis of amounts applicable before rounding off at the time of adjustment. Each year, the Minister of Justice announces, which adjustments are being made.

327.-(1) Free legal aid may, cf. section 325, be granted in a case at a court of first instance

1) in cases as described in sections 139(1), 147e and part 42, however not to a plaintiff in cases regarding the reversal of an agreement or decision under sections 14 or 17(2) of the Danish Act on Parental Responsibility.

2) to a consumer in cases regarding repayment of money that are comprised by an order under the Danish Marketing Practices Act of a court or by the Consumer Ombudsmand, and

3) when an applicant has wholly or in part been successful in an action brought before

a) The Disciplinary Board of the Danish Bar and Law Society, cf. section 146,

b) a rent control board or a tenant complaints board,

- c) a central national complaints board or
- d) a private complaints board or appeals committee approved by the Minister of Family and Consumer Affairs, and cases brought by the applicant to fulfil the committee's decision or a settlement entered before the committee or by the counterparty to change the committee's decision or a settlement entered before the committee.

(2) Free legal aid may, cf. section 325, be granted for an appeal case if the applicant has been wholly or in part successful in the previous instance and the case has been appealed by the counterparty.

(3) Free legal aid under subsections 1 and 2 above cannot be granted if it is obvious that the court will not find in favour of the applicant.

(4) Free legal aid under subsections 1 and 2 above is granted by the court by which the case is heard or may be brought before. If free legal aid is refused, such decision is made by court order. Notwithstanding section 392(2), refusal to grant free legal aid in a case treated by the Danish Maritime and Commercial Court or by the Danish High Court may be appealed without special permission.

328.-(1) Apart from in cases as mentioned in section 327, free legal aid, cf. section 325, may be granted if the applicant is deemed to have a reasonable reason to carry on a lawsuit.

(2) The assessment of whether an applicant has reasonable reason to carry on a lawsuit includes the following:

- 1) the significance of the case for the applicant,
- 2) the prospects of the applicant being successful in its action,
- 3) the size of the subject matter,
- 4) the size of the expected costs and
- 5) the possibility of having the case settled by an administrative committee or a private complaints board or appeals committee approved by the Minister of Family and Consumer Affairs.

(3) In cases heard in first instance regarding termination of housing lease agreements or terms of employment or regarding personal injury, the leaseholder, the employee and the injured person are deemed to have reasonable reason to carry on a lawsuit, unless circumstances as mentioned in subsection 2, items 2-5 above, clearly speak against it.

(4) Free legal aid under subsections 1-3 above is only in exceptional cases granted

- 1) in cases that originate from the applicant's business activity, or
- 2) to the applicant in cases of defamation, unless defamation of a certain crudeness was spread through the mass media or otherwise spread to a larger circle of people.

(5) Free legal aid under subsections 1-3 above is granted by the Minister of Justice. If free legal aid is rejected, the rejection may be appealed to the Danish Board of Appeal Permission within 4 weeks after the applicant having received the rejection.

329.-(1) Apart from the cases mentioned in section 325, cf. sections 327 and 328, the Minister of Justice may upon application grant a party free legal aid when special reasons speak for it. This especially applies in cases, which have fundamental importance or general public importance or which have significant importance for the applicant's social or business situation. If free legal aid is rejected, the rejection may be appealed to the Danish Board of Appeal Permission within 4 weeks after the applicant having received the rejection.

330.-(1) The Minister of Justice may lay down rules regarding the contents of the application for free legal aid and regarding the information, which the applicant must disclose.

331.-(1) For the party in question free legal aid implies

- 1) exemption from fees under the Danish Court Fees Act,
- 2) assignment of a lawyer to conduct the case against remuneration from the state treasury, cf. section 334,
- 3) compensation from the state treasury of costs, which have justly been incurred in connection with the case,

4) exemption from compensating the counterparty the costs of the case and
5) in probate cases, exemption from providing security for probate costs and, if the costs are not covered by the means of the estate, exemption from payment of remuneration to any assistant in the estate and other costs of arrangements initiated with the approval of the probate court.

(2) Free legal aid may in the legal aid certificate be limited to some of the benefits mentioned under subsection 1.

(3) The effects of free legal aid comprises the entire case with the instance in question, including the procedure that is necessary in order to obtain a new hearing of the case before the same court and the enforcement of the decision. The effects also comprise the early arrangements, which were justly made in order to prepare the lawsuit before free legal aid was granted.

(4) The effects of free legal aid also comprise the hearing of the case in the second or third instance, if the case is brought before a higher court by the counterparty, and the party, who has been granted free legal aid, wholly or in part was successful in the previous instance.

(5) The effects of free legal aid do not cease upon a party's death.

(6) The free legal aid certificate may be revoked if the preconditions for which it was granted prove not to be present or prove to have ceased. Once the legal aid certificate is revoked the effects of free legal aid cease.

332.-(1) The court decides the payment of legal costs as if free legal aid was not granted, and that includes an estimated amount for the costs, which in accordance with the value of the subject matter should have been paid, cf. section 331(1)1. To the extent a party has been exempted from paying legal costs to the counterparty, cf. section 331(1)4, the legal costs are paid by the state treasury. If the counterparty is ordered to pay the legal costs, this amount falls to the state treasury. If the party, who has been granted free legal aid, has defrayed costs in connection with the case, the court splits this amount between the state treasury and that party.

(2) The court may order a party, who has been granted free legal aid, wholly or in part to repay the costs of the state treasury in connection with the free legal aid granted, to the extent that the costs are not imposed on the counterparty, if a party's circumstances, including the circumstances after the conclusion of the case, speak for it.

333.-(1) The Minister of Justice appoints a suitable number of lawyers to each court to conduct cases for parties who have been granted free legal aid, or to parties to whom a lawyer is otherwise assigned under this Act. The Minister of Justice may upon appointment of a lawyer to a district court decide that such lawyer does not receive compensation for travel costs in connection with meetings within the judicial district.

(2) In appeal cases the lawyer who has been assigned to conduct the case in the previous instance may also be assigned to conduct the case in the next instance, if the lawyer has the right of audience before such court.

(3) Upon the request of a party, a lawyer that is not appointed by the court in question may be assigned if it is found to be justifiable and the lawyer has the right of audience before such court and is willing to accept assignment.

(4) An authorised junior associate or a lawyer, who does not have the right of audience before the high court, may be assigned in a case that is brought as a test case, if that is deemed justifiable. However, it is a precondition that the case is not found to be unsuitable as a test case and that the party accepts that the case is brought as a test case.

(5) The lawyers mentioned under subsection 1 above must provide legal aid in accordance with section 323(1), 2nd sentence. Lawyers who are not comprised by subsection 1 above, may by application to the authority decided by the Minister of Justice, accept a corresponding obligation.

334.-(1) Assignment of a lawyer is notified by the presiding judge. The assignment also comprises legal action with another court.

(2) The assigned lawyer receives a suitable fee and reimbursement of costs, including travel costs, which the lawyer has justly incurred in connection with the assignment, cf. however section 333(1), 2nd sentence.

(3) If a party requests assignment of a certain lawyer, the court may make such assignment conditional upon such lawyer wholly or in part relinquishing claims against the state treasury for compensation of travel costs.

(4) Fees and compensation are fixed by the court that has made the assignment. Decision on fixing of costs takes place separately when the case or the legal proceedings have been concluded.

(5) The assigned lawyer cannot receive fees or compensation apart from the amounts fixed by the court. In cases as mentioned in subsection 3 above and in cases where the assigned lawyer appears before another court, cf. subsection 1, 2nd sentence, agreement between the party and the lawyer may be made to the effect that the party pays travel expenses that are not covered by the state treasury. The rule in the 1st sentence does not apply, if a special agreement between the party and the lawyer has been entered into regarding the remuneration and the lawyer relinquishes the claim for remuneration from the state treasury.

(6) If the costs of the case are covered by legal expenses insurance or another insurance policy, the fees and remuneration of the assigned lawyer must first be paid by the insurance company.

335.-(1) If the costs of the case are covered by legal expenses insurance or another insurance policy, the state treasury assumes the insured's claim against the insurance company to the extent that the state treasury has covered the costs under the rules of legal aid and free legal aid. However, this does not apply for coverage in the form of exemption from fees under section 331(1)1.

336.-(1) Upon application a party, who has a legal expenses insurance or another insurance policy that cover the costs of the case, may from the state treasury receive compensation of that part of the costs which exceeds the insurance maximum, if the nature of the case or the circumstances otherwise justify that the costs could not be kept within the insurance maximum. The provisions of sections 325-328 equally apply.

(2) Costs of the case are covered in accordance with subsection 1 above to the extent that the state treasury, if free legal aid had been granted, would have covered costs under sections 331, 332 and 334.

(3) When the court under section 327(4) has decided that the conditions in subsection 1 for coverage of that part of the costs that exceeds the insurance maximum are fulfilled, the court also sets the amount to be covered, cf. subsection 2 above.

(4) When the Minister of Justice or the Danish Board of Appeal Permission under section 328(5) decide that the conditions in subsection 1 above for coverage of that part of the costs that exceeds the insurance maximum are fulfilled, the Minister of Justice may decide that payment of the amount sought covered be made, if such amount can be approved, cf. subsection 2 above. If the Minister of Justice cannot approve the amount sought covered, the Minister of Justice will refer the case to the court treating the case or the court which has last treated the case, and that court will set the amount to be covered, cf. subsection 2 above.