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Legal aid

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1 What costs are involved in legal proceedings and who normally has to bear them?

(Legislative sources) - The rules regulating the categories and procedures for costs of legal proceedings, including legal aid, are comprehensively set out in Presidential Decree No 115 of 30 May 2002 (Official Gazette No 139/2002), as last amended by Legislative Decree No 24 of 7 March 2019 (Official Gazette No 72 of 26 March 2019 to extend legal aid to cover wanted persons subject to proceedings for the execution of a European arrest warrant), containing the Consolidated Text on legal costs (**Articles 74 to 145, in particular the common provisions of Articles 74 to 89, Special provisions on legal aid in civil, administrative, auditing and tax proceedings, Articles 119 to 145**).

Law No 794 of 13 June 1942, as amended, governs lawyers' fees for handling civil, commercial, administrative and tax proceedings; fees for individual legal services are paid on the basis of the tariff approved by Ministerial Order No 585 of 1994.

(Costs of proceedings) – The costs, understood in the broad sense, of civil and commercial proceedings include both the costs of proceedings and the expenses and fees for legal representation.

The costs of proceedings consist of a standard payment for entry in the case register and other expenditure items that may arise (such as expert opinions and fees for copying documents).

The standard payment referred to in Consolidated Text No 115 of 2002 is payable at every instance of proceedings, including bankruptcy proceedings and non-contentious proceedings, except where specifically exempted by law.

Payment is not required, in particular, in proceedings regarding a person's family and civil status, as set out in Book IV of the Code of Civil Procedure (for example, in cases of legal separation, provisions relating to minors; property relations between spouses; recognition of refugee status), preventive proceedings (for example seizure to secure debts); land registry proceedings, proceedings to enforce delivery and release, proceedings regarding child maintenance payments, all proceedings concerning children (for example proceedings regarding parental responsibility) and rules on competence and jurisdiction.

The reasons for any exemption must be appropriately declared by the party in the conclusions to the document instituting the proceedings.

The standard payment is not required in the case of civil actions for compensation in connection with criminal proceedings where the application is only that the offender be convicted; if an application is made for compensation, even provisionally, the payment is due if the application is granted. The charge varies between a minimum of **EUR 62 and a maximum of EUR 930**, depending on the nature and value of the case.

(Payment obligations) – Each party must meet the cost of the procedural documents they complete or request and pay for documents necessary for the action if the law or the judge requires them to do so (for example fees for expert opinions). Where the party is eligible for legal aid, the State bears the cost. As regards the standard payment, this must be paid by the party who enters the case, lodges the initial appeal or, in enforcement proceedings, submits an application for assignment or sale.

The value of the case is indicated in the conclusions of the instituting document; a party who amends an application, lodges a counterclaim or intervenes independently and thereby increases the value of the case is required to pay an additional charge.

(The criterion for awarding costs) - In accordance with the general principle set out in Article 91 of the Code of Civil Procedure, the judge orders the losing party to reimburse the costs of proceedings incurred by the successful party as part of his/her judgment on the proceedings.

The judge enjoys discretionary powers with regard to costs and may order them to be paid in part or in full, taking account of the overall outcome of the dispute. He/she must take account of the extent to which the claim as a whole is well founded. The decision may be contested.

The losing party must refund the expenses and fees of the winner's counsel, plus any amounts paid for court-appointed experts or expert witnesses as remunerated by the judge. The losing party is also required to cover the other costs involved in conducting proceedings, which are paid to the clerk of the court together with the cost of notifying the judgment.

2 What exactly is legal aid?

In the Italian legal system, the institution of 'legal aid' to provide a defence for citizens with insufficient means whose grounds are not manifestly unfounded, as well as foreign nationals lawfully resident in Italy when the situation or fact occurs that gives rise to legal proceedings and stateless persons (Article 119 of Presidential Decree No 115/2002), involves exempting such persons from having to meet certain costs ('*spese prenotate a debito*' or pre-paid court fees) and the State paying other costs.

Where there is an entitlement to legal aid, certain fees are free, whereas others are paid by the State. The former include the standard payment, lump-sum costs for notifications upon official request, certain fees (registry fees, mortgage and land registry fees) and fees for copies.

The State pays the following:

counsel's fees and expenses;

travel costs and expenses incurred by judges, officials and judicial officers for performing their duties outside the court;

travel costs and expenses incurred by witnesses, court officials and expert witnesses, and expenses incurred by the latter when performing their duties are also reimbursed;

the cost of publishing any legal notice regarding the judge's ruling;

the cost of notifications upon official request;

childcare allowances.

The State has the right of reimbursement and, where it does not recover the money from the losing party, it may claim repayment from the party eligible for legal aid in the following cases: 1) if the recipient wins the case or settlement of the dispute and receives at least six times the costs or 2) if the case is withdrawn or terminated. There are special provisions for ensuring reimbursement in the event of the case being struck off the case register or terminated as a consequence of failure by the parties to act or meet legal requirements.

3 Do I have a right to legal aid?

In civil proceedings and non-contentious proceedings (for example legal separation, custody of children or rulings regarding parental responsibility), citizens with insufficient means are entitled to legal aid to mount a defence, as long as their grounds are not manifestly unfounded.

Stateless persons and lawfully resident foreign nationals are treated in the same way as citizens, with the proviso that residency in Italy must be lawful as of the date when the situation or fact that gives rise to legal proceedings occurred. Non-profit organisations or associations that are not involved in commercial activities may also qualify; it is thus not just charitable non-profit organisations or non-profit organisations providing education to the poor, which already qualify under Law No 217/90, that are eligible, but also consumer associations and users included in the list in Article 5 of Law No 281/98.

In accordance with Article 76 of Presidential Decree No 115/2002, in order to qualify for legal aid, the applicant must have an annual taxable income, as shown on the most recent tax return, of no more than EUR 11 493.82 (Ministerial Decree of 16 January 2018 in Official Gazette No 49 of 28 February 2018). The income thresholds are adjusted every two years by order of the Ministry of Justice, in consultation with the Ministry of Economy and Finance (Article 77 of Presidential Decree No 115/2002), to take account of variations in the consumer price index for families of blue- and white-collar workers, identified by ISTAT over the two years prior.

Where the party concerned lives with a spouse, a civil partner or other family members, the total income earned during the same period by each family member, including that of the applicant, is taken as the income.

As regards cohabitants whose income should be added to that of the applicant, the income thresholds for criminal proceedings are raised to EUR 1 032.91 for each family member living with him/her.

It should be noted that the divorce allowance received by the applicant must be included for the purposes of calculating the amount referred to under Article 76, unless this is paid as a lump sum.

Income from illicit activities also has an effect on eligibility to receive legal aid, it being clarified that income audits may not rely on automatic procedures and instead require a review of the specific facts of the individual case, thus excluding any possibility of a nonfinal judgment being attributed significance, insofar as this harms the presumption of innocence. Refusal to grant aid on the basis of a non-final judgment from which the existence of income from illicit activities may be presumed is thus unlawful (Criminal Court of Cassation, Fourth Chamber, judgment of 20 February 2013, No 18591).

Exception: personal income alone shall be taken into consideration when the case concerns personal rights, or in proceedings where the applicant's interests conflict with those of the other members of the household with which he/she lives.

Eligibility for legal aid shall remain valid for all stages or instances of proceedings; in civil and administrative matters, however, in contrast to criminal matters, if the party that is granted aid loses, he/she may not use legal aid to contest the judgment without having reapplied for that aid.

In addition, eligibility for legal aid in civil proceedings does not mean that the State is responsible for the costs that the client is ordered to pay to the other successful party, as the expenses and fees are only those due to the counsel of the party that is granted aid, which the State, by replacing that party, undertakes to pay, in consideration of his/her unstable financial situation and the fact that his/her claims are not manifestly unfounded (see Civil Court of Cassation, judgment No 10053 of 2012).

Specific cases

In derogation from the income thresholds established by paragraph 1 of Article 76 of Presidential Decree No 115/2002, the following may, in some cases, qualify for legal aid:

- injured parties of the offences referred to in Articles 572, 583-*bis*, 609-*bis*, 609-*quater*, 609-*octies* and 612-*bis* of the Criminal Code, and, where committed against minors, the offences referred to in Articles 600, 600-*bis*, 600-*ter*, 600-*quinqies*, 601, 602, 609-*quinqies* and 609-*undecies* of the Criminal Code, may be eligible for aid, including in derogation from the income thresholds laid down by law (Article 76, paragraph 4-*ter*);
- unaccompanied foreign minors involved in court proceedings in whatsoever capacity have the right to be informed of the option of appointing a trusted legal advisor, including through their appointed guardian or a person with parental responsibility in accordance with Article 3(1) of Law No 184 of 4 May 1983, as amended, and to apply, on the basis of the applicable legislation, for legal aid at any stage or instance of proceedings (Article 76, paragraph 4-*quater*);
- minor or adult children who are not financially self-sufficient and have lost a parent as a result of murder by the parent's spouse, regardless of whether they were legally separated or divorced, by the parent's civil partner, even if the civil partnership has ended, or by a person who has or had an intimate, long-term relationship involving cohabitation with the parent, may be eligible for legal aid, including by derogation from the statutory income thresholds, by applying that eligibility, as an exception, to the associated criminal proceedings and all civil proceedings resulting from the offence, including enforcement proceedings (Article 76, paragraph 4-*quater*);
- victims of acts of terrorism or similar acts or their survivors (Article 10, paragraph 1, Law No 206/204).

4 Is legal aid granted for all types of proceedings?

As stated above, in civil proceedings and non-contentious proceedings (for example legal separation, custody of children or rulings regarding parental responsibility), citizens with insufficient means are entitled to legal aid to mount a defence, as long as their reasons are not manifestly unfounded.

There are subjective grounds for exclusion from the aid in question:

- The applicant is a person convicted by final judgment for offences associated with the violation of rules on the suppression of income tax and VAT evasion;
- the applicant is assisted by more than one counsel, except for a counsel that has been appointed to participate in criminal proceedings remotely in cases where Law No 11/1998 applies.

There are, however, cases other than those above in which it can be assumed that the applicant has sufficient means, namely the following:

in cases involving transfer of the receivables and interests of others (unless the transfer is made in payment of pre-existing receivables or interests);
in the event of conviction by final judgment for the offences under Articles 416-*bis* of the Criminal Code and Article 291-*quater* of the Consolidated Text referred to in Presidential Decree Nos 43 of 23 January 1973, limited to the aggravated scenarios under Articles 80 and 74(1) of the Consolidated Text referred to in Presidential Decree No 309 of 9 October 1990, and for the offences committed by exploiting the conditions identified by the aforementioned Article 416-*bis* or for the purpose of facilitating the activities of the associations identified by that article, income is considered to be above the thresholds set. Proof to the contrary is permitted, however (Constitutional Court, Judgment No 139 of 2010).

5 Are there special procedures in cases of need?

There is no specific procedure for emergencies. However, it should be pointed out that, in accordance with Article 126 of the Consolidated Text, the bar council may, within 10 days of the application being submitted or received by the latter and where the requirements are met, provisionally grant the applicant legal aid upfront.

6 Where can I obtain a legal aid application form?

In civil proceedings, legal aid applications, drafted using the methods and with the content laid down by Articles 79 and 122 of the Consolidated Text, should be submitted or sent by registered delivery to the bar council, and only by the applicant or the applicant's counsel.

It is not clear whether the registered delivery requires acknowledgement of receipt; therefore, this is not deemed to be a condition of eligibility, but is at the applicant's discretion.

Application forms are available from the offices of the bar council.

Applications for legal aid in civil proceedings must be submitted to the **office of the bar council** that is competent as regards:

the place where the judge before whom proceedings are pending is based;

the place where the judge that is competent to rule on the merits of the case is based, if proceedings are still ongoing;

the place where the judge who issued the contested ruling is based for appeals to the Court of Cassation, the Council of State or the Court of Audit.

The application pursuant to Article 78 of Presidential Decree No 115/2002 is inadmissible unless signed by the applicant. The signature must be authenticated by the counsel or using the procedures established by Article 38(3) of Presidential Decree No 445 of 28 December 2000.

7 Which documents need to be submitted with the legal aid application form?

The application, signed by the applicant, must be made on plain (unstamped) paper and must indicate the following (Article 79 of the above Presidential Decree):

the request for legal aid

the personal details and tax code of the applicant and the members of his/her household

a statement of the income received the year prior to the application (self-declaration)

a commitment to notify any significant fluctuations in income for the purposes of eligibility for aid

if the case is already pending

the date of the next hearing

the counterparty's details and place of residence

factual and legal grounds for assessing the foundation of the claim being asserted

evidence (documents, contact details, witness statements, expert opinions, etc. to be enclosed in copy).

8 Where do I submit my application for legal aid?

As stated above, legal aid applications for civil proceedings must be submitted to the **office of the bar council** that is competent as regards:

the place where the judge before whom proceedings are ongoing is based;

the place where the judge that is competent to rule on the merits of the case is based, if proceedings are still ongoing;

the place where the judge who issued the contested ruling is based for appeals to the Court of Cassation, the Council of State or the Court of Audit.

As regards criminal proceedings, applications must be submitted to the judge before whom proceedings are pending, it being clarified that, if proceedings are pending before the Court of Cassation, it is the judge who issued the contested ruling that is competent (Articles 93 and 96 of the above Presidential Decree).

Applications must be submitted to the clerk of the court at which the proceeding judge is based, by the applicant or the applicant's counsel, or may be sent to the clerk by registered delivery.

If the applicant is detained or imprisoned, applications may be received by the director of the penal facility or by an officer of the judicial police.

It is no longer possible to submit applications during a hearing.

9 How do I find out whether I am entitled to legal aid?

A copy of the document by which the bar council grants, rejects or declares the application inadmissible will be sent to the applicant and the judge.

After the application has been submitted, the bar council will:

assess the foundation of the claim being asserted and whether the conditions for eligibility have been met,

issue one of the following rulings within 10 days:

acceptance of the application

inadmissibility of the application

rejection of the application

sends a copy of the ruling to the applicant, the competent judge and the Revenue Agency, in order to verify the income declared.

If the bar council rejects or declares the application inadmissible, it may be brought to the judge hearing the case, who will then take a decision in the form of an order. The time limit is mandatory.

Following completion of the checks, the judge will issue a reasoned order declaring the application inadmissible, or else its acceptance or rejection.

Once issued, the clerk of the court will notify the applicant of the order.

In criminal proceedings, however, the judge must issue an order within 10 days following the date of submission or receipt of the application.

10 What should I do, if I am entitled to legal aid?

11 Who chooses my lawyer, if I am entitled to legal aid?

Applicants granted legal aid may appoint a counsel from the lists of legal aid counsels drawn up by the bar councils of the Court of Appeal district in which the judge competent to rule on the merits of the case or the judge before whom proceedings are pending is based.

Applicants granted legal aid may also appoint an expert witness, where permitted by law.

If the case is before the Court of Cassation, the counsel will be chosen from the lists drawn up by the bar councils of the Court of Appeal district where the judge who issued the contested ruling is based.

The list of legal aid counsels comprises professionals who have applied to be put on it and have the qualifications necessary to mount a defence.

The bar council makes the decision to include counsels on the list on the basis of their aptitudes, professional experience gained over at least six years and the fact that they have not been subject to disciplinary measures.

Counsels may be struck off the list at any time. It is renewed every year and made available to the public at all judicial offices in the district.

Counsels representing the party that has been granted aid must request notice that proceedings have been discontinued if they are struck from the case list on the grounds of the parties' failure to act (pursuant to Article 309 of the Code of Civil Procedure). Failure to comply with this obligation is a disciplinary matter.

12 Does legal aid cover all the costs of the proceedings?

Recipients of legal aid (Article 107 of the above Presidential Decree) are exempted from having to pay certain costs, while others are paid by the State, as set out in Article 131 of Presidential Decree No 115/2002. The aid covers all the costs of the proceedings required by law, including the appointment of an expert witness acting for the applicant. It does not, however, cover the cost of out-of-court consultations.

The fees and expenses due to the applicant's counsel are paid by the judge at the end of each stage or instance of proceedings and, in any event, upon termination of the appointment.

Expenses and fees are also paid to the judge's assistant and to any expert witness acting for the applicant.

The recipient and the parties involved, including the public prosecutor, are notified of and may contest the payment order.

The applicant's counsel, the judge's assistant and the expert witness acting for the applicant may not request or receive remuneration or compensation from their client other than that provided for by law. Any agreement to the contrary is null and void and any infringement of this prohibition is a serious disciplinary offence.

In the case of civil action brought in connection with criminal proceedings, the costs of the proceedings are governed by Article 108 of the Consolidated Text.

Broadly speaking, however, eligibility for legal aid gives the recipient the same entitlements as those covered by the general rules.

13 Who bears the other costs, if I am entitled only to limited legal aid?

The rules on legal aid do not provide for partial aid.

14 Does legal aid also cover appeals?

Eligibility covers all instances and stages of proceedings and any derived or otherwise connected procedures (such as enforcement).

However, if the party that has been granted aid loses, he/she may not use legal aid to contest the ruling, apart from claims for compensation in connection with criminal proceedings.

15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)

If there are changes with regard to the recipient's income during proceedings that have an effect on his/her eligibility for legal aid, the proceeding judge will withdraw the aid.

The proceeding judge may also withdraw legal aid at any time if it emerges that the eligibility criteria have not been satisfied or that the party concerned has acted or reacted in bad faith or with gross negligence.

The withdrawal takes effect from the moment when the change in income has been verified, but in other cases it is retroactive and requires the recovery of the sums paid by the State.

If it is discovered that false statements have been made, the finance office requests the withdrawal of aid and forwards the evidence to the Public Prosecutor responsible for instituting any resultant criminal proceedings.

Checks that the eligibility criteria continue to be satisfied may be repeated during proceedings at the request of the judicial authorities or on the initiative of the finance offices.

In the event that false statements regarding income have been made, this carries a sentence of between one and five years' imprisonment and a fine of between EUR 309.87 and EUR 1 549.37. The sentence or fine is increased if the false statement resulted in the applicant obtaining or continuing to obtain legal aid.

Conviction results in retroactive withdrawal of aid and recovery of the sums paid by the State from the offender (cf. Article 136 of the above Presidential Decree).

16 Can I contest a refusal to give legal aid?

If the competent bar council rejects the legal aid application or declares it inadmissible, the applicant may reapply to the judge hearing the case, who will then take a decision in the form of an order.

In criminal proceedings, however, Article 99 of the Presidential Decree establishes that the applicant or the applicant's counsel may submit an appeal to the President of the Court or of the Court of Appeal to which the judge who rejected the application belongs within 20 days of notification of the unsuccessful application.

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