



**LA CHILD**   
Enhancing legal aid for children in conflict with the law

# LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW

**National Report on Italy  
May - July 2020**



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## INTRODUCTION TO THE PROJECT AND THE QUESTIONNAIRE

This national research questionnaire was prepared when implementing the EU co-funded project *Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)*. The Project is implemented by the consortium consisting of *Law Institute of Lithuania (LIL)*, *Defence for Children International (DCI) - Belgium* and *Center of Integrated Legal Services and Practices (CILSP, Albania)*. It started in February 2020 and will end in December 2021.

The Project' s overall objective is to contribute to enhancing protection of procedural rights of children in conflict with the law and to foster coherent implementation of Directive 2016/800 in the EU Member States as regards legal aid to children. For this purpose, the Project will develop common standards, showcase best practices and innovative approaches that can be replicated across the EU as well as organize capacity building activities.

The Project' s activities started with the evaluation of regulation and practices in European States when providing legal aid for children in conflict with the law. This questionnaire is the basis of this research. After having collected the responses, these responses will be analysed by the project researchers and a summarising report will be drafted. The prepared report will identify the main challenges encountered as well as the best approaches to achieving effective and efficient legal aid for children.

Later on, the Project team will draft Guidelines on providing legal aid to children in conflict with the law as well as a 'child friendly' version. In addition, in the end of 2020, an international conference is planned in Vilnius, where experts from different states will share their knowledge and insights. In 2021, tailored practical trainings to lawyers, judges, legal aid board members and social workers will take place in Lithuania, Belgium and Albania. The final stage of this Project will be a roundtable discussion in Brussels where key Project outcomes and best practices will be presented and discussed.

## KEY DEFINITIONS:

**Legal aid** means the provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under the national law for persons detained, arrested or imprisoned; for persons suspected or accused of, charged with or convicted of a criminal offence; and for victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.<sup>1</sup>

**Child** is a human being under the age of 18.

**A child in conflict with the law** is a person who has reached the age of criminal responsibility but not the age of majority (under 18 years old), who is suspected or accused of having committed an offence under his national criminal law.<sup>2</sup> The age that needs to be taken into consideration to determine whether a child is in conflict with the law is the age at the time of committing the offence, not later than that.

**Legal aid provider** means any person who is providing legal aid pursuant to national law.

**Legal aid authority** means the authority established under the national law for the purpose of managing, coordinating and monitoring the provision of legal aid.<sup>3</sup>

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<sup>1</sup> Model Law on Legal Aid in Criminal Justice Systems. United Nations. Vienna, 2017.: [www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model\\_Law\\_on\\_Legal\\_Aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf)

<sup>2</sup> <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

<sup>3</sup> *Ibid.*

## PART 1: AUTHORS AND GENERAL INFORMATION

1.1 Please list all the names of experts and lawyers who worked on this report.

DLA Piper Italy: Elena Davanzo (Legal Director); Federica Bocci (Lead Lawyer), Ornella Vastola (Lawyer), Marianna Busetti (Lawyer), Andrea Serafini (Trainee Lawyer) and Giulia Scalfi (Trainee Lawyer).

1.2 Please name the country which this report applies to.

This report applies to Italy.

1.3 Please provide a full list of acronyms used in your report, if any.

**Code of Conduct**, means the code of conduct (*Codice Deontologico*) approved by the Italian National Bar Association on 31 January 2014 and published on the *Gazzetta Ufficiale Serie Generale* no. 241 on 16 October 2014.

**Legal Profession Law**, means law 247/2012.

1.4 Please explain the methodology used to complete this report and sources that were used (such as internet research, legal database research, case law research) and any limitations that were experienced when undertaking this research (such as lack of enough data, resources, directives, etc.)

- Internet research;
- Legal database research;
- Legislative research;

1.5 Please keep a list of the most useful materials that you find during your research that are applicable to your country. We are mainly looking for research studies, analyses, reports, tools, etc. relevant to the rights of access to legal aid for children in conflict with the law at the local/national level.

- Article 24 of the Italian Constitution
- Article 97 of the Italian Criminal Procedure Code
- Article 98 of the Italian Criminal Procedure Code
- Article 143 of the Italian Criminal Procedure Code
- Article 472 of the Italian Criminal Procedure Code
- Presidential Decree no. 115/2002
- Presidential Decree no. 448/1988
- Guidelines dated 16 July 2014, no. 6 of the Italian National Bar Association
- Legal Profession Law
- Code of Conduct
- website of the Court of Reggio Calabria:  
[http://www.tribmin.reggiocalabria.giustizia.it/articoli.php?nome=Gratuito-Patrocinio-nei-Procedimenti-Penali&id\\_articolo=905](http://www.tribmin.reggiocalabria.giustizia.it/articoli.php?nome=Gratuito-Patrocinio-nei-Procedimenti-Penali&id_articolo=905)
- website of the Court of Milan:  
<http://www.tribmin.milano.giustizia.it/it/Content/Index/28700>
- website of giustizia.it: [https://www.giustizia.it/giustizia/it/mg\\_3\\_7\\_2.page](https://www.giustizia.it/giustizia/it/mg_3_7_2.page)
- website of the Italian National Bar Association:  
<https://www.consiglionazionaleforense.it/protocolli-sui-compensi>;  
<https://www.consiglionazionaleforense.it/web/cnf/calcolo-istanza-pss>
- website of Defence for Children: <http://www.defenceforchildren.it/>

## PART 2: NATIONAL LEGAL AID SYSTEM

### Regulation of legal aid

2.1 Please shortly describe the legal framework regulating the legal aid system in your country. (this description should not be longer than half of a page).

The Italian legal aid system is governed by rules of different rank. The Italian Constitution, in fact, provides for a general right of access to legal aid for have-nots, which is then implemented by secondary legislation. In particular, in order to comply with EU legislation and to reform the prior legal aid system, the Presidential Decree 115/2002 was adopted to regulate the management and organisation of the legal aid system in Italy.

Please note that the legal framework regulating the legal aid system is mainly composed of the following provisions:

- Article 24 of the Italian Constitution;
- Article 97 of the Italian Criminal Procedure Code;
- Article 98 of the Italian Criminal Procedure Code;
- Presidential Decree no. 115/2002;
- Presidential Decree no. 448/1988.

2.2 Which laws or/and policy documents regulate legal aid? Please describe briefly the objectives and content of regulation of each legal act or policy document.

- Article 24 of the Italian Constitution establishes the constitutional right to access legal aid for have-nots;
- Article 97 of the Italian Criminal Procedure Code provides rules for the appointment of lawyers by the Court (*difensore d' ufficio*);
- Article 98 of the Italian Criminal Procedure Code governs access to the legal aid under criminal law;
- Presidential Decree no. 115/2002 governs the general terms of access for and usage of the legal aid system in Italy (*e.g.* appointment of the lawyer, remuneration, access criteria, etc);

- Presidential Decree no. 448/1988 governs the criminal trial for children.

2.3 Do those general laws or/and policy documents on legal aid refer to specifics of legal aid to children? Please describe briefly and present the relevant extracts from those documents.

The general laws and policies governing legal aid do not provide for different regimes distinguishing between adults and children, except for the provisions summarised as follows:

- Article 76, paragraph 4-quater, of Presidential Decree no. 115/2002 grants the right for unaccompanied foreign children to receive information on their right to appoint a lawyer and to receive the benefit of legal aid directly by his/her guardian or by the person having his/her parental responsibility;
- Article 76, paragraph 4-quater<sup>1</sup>, of Presidential Decree no. 115/2002 provides for the right of children that have lost one of their parents murdered by the other parent to access the legal aid system even in the event they do not meet the income requirements set forth by Italian laws.

2.4 Are there any laws or policy documents specifically addressing legal aid for children adopted in your country? If yes, please describe objectives and content of regulation of these laws or policy documents and provide their texts (if the texts are long, no translation for the texts is requested).

N/A

2.4 bis. Does your country have a law that specifically regulates or limits access to legal aid for terrorist suspects or perpetrators? Does such a regulation also apply to minors and what does it provide for?

N/A

## Management and administration of legal aid

2.5 How the legal aid system is organised nationally, regionally or locally? Who is in charge of the management and oversight? Please describe status and functions of the legal aid authority (legal aid board or similar body) institution.

The regulation is applicable in all national territory, providing the general criteria to access the legal aid system for both beneficiaries and lawyers.

The management and oversight of legal aid are provided locally. In particular, on one hand, each court shall assess compliance with the criteria set forth by the law of each potential beneficiary for access to the legal aid system. On the other hand, the bar associations at each court (*Ordine degli Avvocati*) manage the list of lawyers entitled to provide the legal aid, verifying the relevant professional requirements provided for by the national law.

2.6 Is there an institution who is working particularly with legal aid for children? Is there a department (division) within the main legal aid institution that is specialised in legal aid for children? If yes please describe in more detail.

N/A

## Funding of legal aid

2.7 How is the legal aid system financed?

The legal aid system is nationally financed by the public budget.

2.8 How are legal aid providers (including lawyers) paid? What are legal aid providers' (lawyers' ) fees for legal aid?

Legal aid providers' fees are paid by the judicial authority, which issues a payment decree based on the standard professional fees. The standard professional fees may be different

depending on the relevant bar association; however, the Italian National Bar Association (*Consiglio Nazionale Forense*) released a Memorandum of Understanding (*Protocollo di Intesa*) applicable to the bar associations which accessed the Memorandum of Understanding setting forth the standard professional fees for the legal aid.

2.9 Are there any differences between fees provided for legal aid for children compared with legal aid for adults? If yes please describe in more detail.

N/A

2.10 Are there different fees for a representation of a child in criminal (juvenile justice) proceedings as compared to representation in civil or administrative cases?

There are no differences in the fees paid to lawyers providing legal aid to children verses adults.

The relevant payment is related to the assistance actually provided during the legal proceeding, which may consist of different activities between criminal proceedings and/or civil proceedings and/or administrative proceedings.

However, the Italian National Bar Association (*Consiglio Nazionale Forense*) provides a service to calculate the fee depending on each activity performed (please refer to the following website: <https://www.consiglionazionaleforense.it/web/cnf/calcolo-istanza-pss>).

## PART 3. RIGHTS OF BENEFICIARIES OF LEGAL AID

### Access to legal aid

3.1 What are the general criteria for accessing legal aid? Who is entitled to legal aid?

Legal aid is granted to persons having a taxable income (*i.e.* "IRPEF") not exceeding the sum of 11,369.24 Euros. The income threshold is increased 1,032.91 Euros for each of the family members living together with the applicant. However, the income taken into consideration for these purposes is the total income resulting from the sum of the income of all cohabiting citizens, whether they are spouses or family members. Please note that when personal rights are the subject matter of the proceeding (as in the case of a legal separation), reference is made exclusively to the income of the applicant.

The persons who may apply for legal aid who meet the economic requirements, are: (i) all Italian citizens; (ii) stateless persons (*i.e.* people without citizenship); (iii) non-profit organizations (*i.e. organizzazioni senza scopo di lucro*) or associations; and (iv) foreigners with a regular residence permit.

Persons already convicted by a final judgment for certain criminal offences such as mafia association pursuant to Article 416-bis of the Italian Criminal Code cannot access legal aid.

3.2 In which circumstances are children in conflict with the law entitled to legal aid?

3.2bis. Are foreign children entitled to legal aid in your country when they are in conflict with the law (is access to legal aid conditioned by nationality or residency status for children)?

Children' s access to legal aid is regulated by the same rules applicable to adults described in our reply to question no. 3.1 above. Hence, access is limited to Italian citizens, stateless persons, and foreigners with a regular residence permit.

3.3 Is legal aid to children in conflict with the law always free or partial payment can be requested?

All activities related to the proceeding are covered by legal aid legislation so they are always free while all the extrajudicial activities are not included in the legal aid system.

3.4 Can children victims of crime access free legal aid in your country?

Yes, they can. In particular, according to Article 76, paragraph 4-ter, of Presidential Decree 115/2002, children victims of certain crimes (*e.g.* victims of domestic violence or child prostitution) are entitled to access the legal aid system even in the event they do not meet the income requirements described in our reply to question no. 3.1 above.

3.5 Is the representation of a lawyer mandatory for any alleged child offender? In which case and at what point in the proceedings?

Yes, such representation is mandatory. Article 24 of the Italian Constitution and Article 75, paragraph 1, of Presidential Decree 115/2002 guarantee a defence as a general right at all stages and point of the proceedings.

3.5bis. Is there a mandatory lawyer participation for children who are suspected or accused of terrorism?

Please refer to our reply to the question no. 3.5.

3.6 Is there a mandatory lawyer participation for children victims of crime provided in your country? In which cases?

The position of children victims of crime is represented by the Public Prosecutor and therefore lawyer participation is not mandatory. However, if the victim decides to claim for damages suffered as a result of the crime, then an individual lawyer is also appointed (please note that this depends on the victim child's choice and it is not mandatory).

3.7 If a child benefits from legal aid, can he/she choose his/her lawyer? What is the legal role of the parents in this regard?

Pursuant to Article 80 of Presidential Decree 115/2002, the beneficiary of legal aid has the right to appoint a lawyer chosen from the relevant list of legal aid providers kept by the bar association at each court. Please note that there is no specific regulation regarding the appointment of a legal aid provider for children.

3.8 If the child benefits from legal aid, can he/she change lawyer during the same proceedings? In which circumstances? What is the procedure? Please explain the answers in more detail.

A child beneficiary of legal aid may change his/her appointed lawyer during the proceeding at any stage. In order to maintain all the benefits granted by the legal aid system, the newly appointed lawyer has to be one of those listed in the relevant list of legal aid providers kept by the bar association at the relevant court. Please note that if the newly appointed lawyer is not included in the mentioned list, he/she shall be paid directly by the child or his/her parents or by the person having his/her parental responsibility.

3.9 Does a child have the right to access free interpreter if he/she needs one when meeting with provided lawyer?

Article 143 of the Italian Criminal Procedure Code states that any defendant who does not speak the Italian language has the right to be assisted by an interpreter for free.

### Access to information about legal aid

3.10 Does the State play a role in giving information to a child regarding legal aid system? Are there any initiatives (media or educational campaigns, etc.) to inform children about the legal aid system?

The State informs any person involved in a procedure of the right to appoint a lawyer. In particular, for unaccompanied foreign children, such information may be communicated by his/her guardian or by the person having his/her parental responsibility.

3.11 Are there any organisations or associations that give information and facilitate a child's right to legal aid?

Yes, the relevant information is accessible on the website of any Court of Justice and of any bar associations at each court. There are several associations and/or organisations operating in the Italian territory involved in children's rights such as Defence for Children (website: <http://www.defenceforchildren.it/>), which, *inter alia*, provides information about access to the legal aid system.

3.12 If a child is deprived of liberty in the context of a criminal proceedings (e.g. held on remand at a prison, held at the police station or a hospital etc.) how does he/she receive information on his/her right to legal aid?

The information is provided directly by the court.

3.13 Is there an obligation to provide the information in child-friendly language?

Article 12 of Presidential Decree 448/1988 provides for a child's right to receive psychological assistance at any stage of the proceeding. Please note that there is no specific regulation on child-friendly language.

3.14 If a child cannot speak the official language of the country, is there an obligation to provide the information in the child's mother tongue or in a language spoken/understood by the child?

Please refer to our reply to question no. 3.9 above.

3.15 If the information needs to be translated or an interpreter needs to be provided, who covers the costs for the interpretation/translation?

Please refer to our reply to question no. 3.9 above.

### Protection of child interests

3.16 Is there a legal mechanism or a rule to address a conflict of interests between the child and his parents (e.g. when a child is a suspect and a parent is a victim)? Is there a legal mechanism or a rule to address a conflict of interests between the child and his lawyer? If yes, please describe in more detail.

No, there is no a specific legal mechanism to address a conflict of interests between the child and his/her parents; however, if we consider a case where a child is a suspect and a parent is a victim, precautionary measures could be applied (*e.g.* pre-trial detention).

No, there is no specific legal mechanism to address a conflict of interests between the child and his/her lawyer; however, there is always the possibility to revoke his/her lawyer and appoint another one.

3.17 Is the child protection institution involved in criminal proceedings when a child is suspect or accused? In case, please describe in more detail.

Article 12 of Presidential Decree 448/1988 sets forth the right of children to receive psychological assistance at any stage of the proceeding, including the attendance at the proceeding of their parents or of any other individual indicated by the child. Article 13 of Presidential Decree 448/1988 prohibits the disclosure of any information or images regarding children involved in any proceeding. In addition, pursuant to Article 472 of the Italian Criminal Procedure Code, the judge has the right to prohibit access to the hearings to any person not directly involved in the proceeding.

3.18 Are experts such as psychologists, social workers, medical staff or others involved in criminal proceedings when a child is suspected or accused? In which cases? Are they paid by the State or by the child or his/her parents?

Article 12 of Presidential Decree 448/1988 sets forth the right of children to receive psychological assistance at any stage of the proceeding, including the attendance at the proceeding of their parents or of any other individual indicated by the child.

In addition, Article 6 of Presidential Decree 448/1988 provides for the right of the judge to ask for the assistance of special services for children provided by the judicial authority and/or local entities.

## PART 4. LEGAL AID PROVIDERS (LAWYERS)

### General requirements for legal aid providers

- 4.1 What professionals are entitled to provide legal aid to children in conflict with the law in your country? Please describe the status and functions (duties) of legal aid providers.

Lawyers are the professionals entitled to provide legal aid to children in conflict with the law in Italy. According to the Code of Conduct and the Legal Professional Law, the main functions of lawyers could be summarised as follows:

- i. protecting the rights of freedom, inviolability, and effectiveness of the defence, and ensuring the validity of the judgment and the compliance with the adversarial principle (*principio del contraddittorio*) during a legal proceeding;
- ii. during their legal assistance, ensuring that the laws comply with the principles of the Constitution and the European Union Regulations as well as the Convention for the Protection of Human Rights and Fundamental Freedoms in order to protect and in the interest of his/her client;

additionally, please note that the legal activities shall be performed on the basis of independence, loyalty, honesty, probity, dignity, decorum, and competence, taking into account the social importance of the defence and in compliance with the principles of fairness.

- 4.2 What are the requirements to be a legal aid provider in your country?

The bar association at each court decides on the inclusion of a lawyer in the list of the legal aid providers, assessing the following requirements:

- i. attitudes and specific professional experience, taking into account civil, criminal, administrative, accounting and tax proceedings;
- ii. being a lawyer enrolled in an Italian bar association for, at least, two years;
- iii. no infliction of any disciplinary measure during the last 5 years.

4.3 In the legal aid system, is there any type of registration requirement for lawyers who want to represent children in criminal proceedings (with bar association or another body)?

According to Article 11 of Presidential Decree 448/1988, the lawyers appointed by the court to represent children in criminal proceedings shall be included in a specific list prepared by the bar association at each court. The requirements to be included in such list are the following:

- i. having, not occasionally, carried out the legal profession before the juvenile courts;  
or
- ii. having attended advanced trainings for lawyers in relation to juvenile law and issues related to youth.

Please note that these requirements are required only for the lawyers appointed by the court and there are no specific requirements for legal aid providers.

4.4 In your country, are there any legal entities (any associations/organisations) who provide legal assistance to children in criminal proceedings? If yes, can you please provide some information on such legal entity' s activities.

Initiatives and projects related to providing legal assistance to children in criminal proceedings are provided, for example, by Defence for Children.

Education and qualification of legal aid providers (requirements for becoming legal aid providers)

4.5 What are education requirements for legal aid providers?

N/A

4.6 Are there any specific requirements for legal aid providers who provide legal aid for children? Are they required to undergo specific trainings (e.g. on juvenile justice, children's rights, psychology, communication with children, etc.)?

Please refer to our reply to the question no. 4.3 above.

## Continuous training

4.7 Is there a continuous training on juvenile justice offered/mandated throughout a legal aid provider's (lawyer's) career?

According to the Legal Professional Law, lawyers shall perform activities aimed at a continuous training and updates. The goal is to reach 60 by attending several activities as training on legal matters during a three year period. Therefore, there is no specific mandatory training on juvenile justice.

The offer of training on juvenile justice is wide so there is no a common set of requirements all over the country. Please note that training could be free or with fees, be organised by many entities (e.g. bar associations), and contain different duration and content, all related to juvenile justice.

When answering those questions, please cover the following:

- Is the training mandatory?
- Is the training accessible, affordable and/or free?
- Does the training meet a common set of requirements all over the country?
- Who offers the training? (e.g. university, bar association, legal aid administrator, NGOs or other associations, etc.)?
- What is the form of the training? (e.g. day sessions, evening classes, online, self-training, etc.)
- What is the content of the training?
- What is the length of the training offered?
- Is it theoretical and/or practical?
- Is it exclusively legal? Or is it a multidisciplinary training (psycho-socio aspects, how to communicate with children, does the training include a

dimension of child support/assistance, etc.)? Are other professionals involved in the training?

- Do children participate in the lawyers' training (e.g. to share their experiences with the lawyers)? How?
- Are there practical exercises on how to interview or represent children?
- Are specific trainings available for legal aid providers on the rights and needs of some specific categories of children when in conflict with the law (including migrant children, children at risk of trafficking, children accused or suspected of terrorism)?

4.8 Are there any materials (e.g. manuals, self-training tools, reports) that exist at the national level on the role and mission of lawyers who represent children in criminal proceedings?

Certain manuals related to juvenile justice are available.

### Specialisation of legal aid providers

4.9 Is specialisation on children cases for legal aid providers established in your country? If yes, is the specialisation mandatory? Please describe in more detail.

Please refer to our reply to question no. 4.3 above.

4.10 Is there a network or a list of specialised legal aid providers (lawyers) available to beneficiaries? Please describe in more detail.

Please refer to our reply to the question no. 4.3 above.

4.11 If the specialisation exists, what is the role of these lawyers at the different stages of the criminal proceeding? Where is it defined? How does it differ from the role of a lawyer who is not specialised to represent children in criminal proceedings?

N/A

## PART 5. QUALITY AND ASSESSMENT OF LEGAL AID

### Legal aid quality standards (guidelines)

5.1 Are legal aid standards (or guidelines) for legal aid (in general) established in your country?

N/A. The lawyers shall fulfil the obligations of periodical professional training. Please refer to our reply to the question no. 4.7 above.

5.2 Are there special standards on providing legal aid for children (guidelines on child-friendly legal aid) established in your country? If yes, please describe in more detail and present the text if possible (no translation of the text is required).

N/A

### Complaints

5.3 What is the procedure for a child/parent/guardian to present complaints about the lawyer' s actions in your country (complaints to the bar, legal aid authority, etc.)?

It must be made clear that the obligation the lawyer assumes towards his/her client is an obligation of means and not an obligation of result because he/she undertakes to carry out the assignment to achieve the desired result but cannot commit to achieve that result. This means that the failure to achieve the result hoped for by the client does not, in itself, indicate the professional's failure to perform his/her duties, which should instead be assessed by considering compliance with the duties that accompany the performance of the professional activity, in particular the duty of diligence.

The liability of the lawyers may be of (i) a civil nature – in this case the client may claim for damages before the competent civil court, of (ii) criminal nature (e.g. the offences of unfaithful advocacy or advice and other infidelities of the advocate or technical consultant) – in this case the client shall act before the competent criminal court, and (iii)

disciplinary for violation of the rules of the *Codice Deontologico* – in this case there is a procedure before the bar associations at each Court (*Ordine degli Avvocati*).

5.4 Can a child make a complaint about his/her lawyer? How?

Yes, through the parents jointly, the parent exercising parental responsibility, or the guardian.

### Assessment of legal aid quality

5.5 How is lawyers work quality assessed in your country?

N/A

5.6 Are there any legal aid quality assessment measures (e.g. peer review) established and implemented in your country? Please describe in more detail (e.g. who are responsible for assessment, what are the procedures and criteria of assessment etc.).

Please refer to our reply to question no. 4.7 above.

5.7 Does such assessment include children cases in criminal proceedings? Are there special rules of procedures for assessment of children cases? Please describe in more details.

N/A

## PART 6. STATISTICS

6.1. Please provide the following statistics of the year 2019 (or data of the last year available).

The statistics have been provided by the Department of Justice Affairs - General Directorate of Criminal Justice. The latest report available was released in October 2019 and it concerns data between 1995 – 2018 (the **“Report”** ). The Report refers to persons who had access to legal aid only in criminal proceedings.

- The number of persons who benefited from legal aid.

The number of persons who benefited from legal aid include:

- persons of age (18 years old or older) and minors, that applied for the legal aid; and
- minors (under 18 years of age), who will be provided with the lawyers appointed by the Court regardless of any specific request in this respect.

In the given period of time (*i.e.* between 1995 and 2018), the number of persons who benefited from legal aid increased from 15,000 (in 1995) to 171,318 (in 2018).

PERSONS REQUESTING ADMISSION TO LEGAL AID AND MINIMUM ADMITTED TO LEGAL AID	PERSONS ADMITTED TO CRIMINAL LEGAL AID (%)						
	1995	1999	2003	2007	2011	2015	2018
PERSONS REQUESTING ADMISSION TO LEGAL AID	55.7%	83.2%	91.0%	91.5%	94.6%	97.0%	97.9%
MINIMUM ADMITTED LEGAL AID	44.3%	16.8%	9.0%	8.5%	5.4%	3.0%	2.1%
TOTAL %	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
TOTAL PERSONS ADMITTED	15,000	41,073	68,855	97,951	111,163	141,130	171,314

- The number of children who benefited from legal aid and the number of cases.

Unfortunately, the Report only provides for an aggregate data of the persons who benefited from legal aid which include both persons of age and minors who applied for the obtainment of the legal aid. The only available data for minors is the one for minors who have been provided with lawyers appointed by the court even absent any specific request for the legal aid.

Out of 15,000 persons who benefited from legal aid (see above), 44.3% were minors who were provided with legal aid *ex officio*. This figure decreased to 2.1% out of the 171,318 persons in 2018 (see table above).

The number of cases is not available.

- The number of legal aid providers (lawyers) in general.
- The number of legal aid providers (lawyers) who provided legal aid to children (if available).
- Number of complaints about legal aid per year (total, including cases not related to children).
- Number of complaints where the beneficiary of legal aid was a child (if available).
- If you have data, please provide statistics representing backgrounds of complaint?

## PART 7: CASE LAW

7.1. Please present national case law of higher courts for the period 2015-2020 (focusing on appeal and supreme court decisions) dealing with the access to legal aid for children in criminal proceedings (for example cases dealing with difficulties to access legal aid, absence of access to a lawyer etc.). Please discuss 5-10 most important decisions/rulings. If less than 3 cases can be found in this period, please refer to the years 2010-2020.

Please use this table. Attach the full text of decisions (no translation required).

Case reference (court, decision number and date)	<b>Supreme Court (Corte di Cassazione) criminal case-law No. 12191 of April 15, 2020</b>
Main issue of the case	Access to legal aid for children involved as victims in criminal proceedings for certain crimes ( <i>e.g.</i> , child prostitution pursuant to g 600- <i>bis</i> of the Italian Criminal Code) in derogation of the income threshold established by applicable laws having regard to the specific type of crimes.
Summary of the facts	On June 10, 2019, the Court of Appeal of Bologna revoked the access to legal aid granted in favour of A.N., a child victim of the crime of exploitation of children prostitution punished under Article 600-bis of the Italian Criminal Code since the Tax Agency had ascertained that, based on the last statement of income for the year 2018, the victim' s family taxable income exceeded the legal threshold provided by applicable laws to be eligible for legal aid in criminal proceedings. The victim lodged an appeal at the Supreme Court against the Court of Appeal' s decision arguing that: the person victim of such offence was a child and, as a consequence, must be admitted to the legal aid in derogation of the income threshold established by

	<p>applicable law pursuant to Article 112 of the Presidential Decree 115/2002 having regard to the specific offence; the obligation of the self-certification of income and the subsequent communication of any discrepancy to be generally accomplished by any applicant according to Article 79, Paragraph 1, lett. d), of the Presidential Decree 115/2002 under penalty of inadmissibility to legal aid, should not be applied in such case since the threshold was exceeded actually in July 2018 when the criminal proceedings were already established by a final judgment.</p>
<p>Summary of the findings</p>	<p>Pursuant to the Italian legislation in case of admission to the legal aid procedure all the costs related to the proceedings are barred by the State pursuant to the Presidential Decree 115/2002, except if during the procedure there is a significant change of the economic conditions of the subject admitted.</p> <p>The following may be eligible for legal aid:</p> <ul style="list-style-type: none"> <li>- people holding yearly taxable income as from the lastet statement of income, not exceeding the legal threshold provided according to applicable laws;</li> <li>- Italian citizens, foreign citizens and stateless persons.</li> </ul> <p>In such case-law the victim was admitted to the legal aid in 2016 and, at that time, the victim' s family taxable income was lower than the legal threshold provided by Italian laws to be eligible for legal aid.</p> <p>Furthermore, any person victim of an offence such as abuse against family members and cohabitants, sexual violence against minors, sexual acts with a minor, minor prostitution, child pornography, if committed against a minor have to be admitted to the legal aid in derogation of the income threshold established by law having regard to the type of crimes pursuant to Article 76, Paragraph 4- <i>ter</i> of the Presidential Decree 115/2002.</p>

	Also, the obligation of the self-certification of income and the subsequent communication of any discrepancy to be generally accomplished by any applicant according to Article 79, Paragraph 1, lett. d), of the Presidential Decree 115/2002 under penalty of inadmissibility to legal aid, is not applicable in such case, since the threshold was exceeded in July 2018, when the criminal proceedings were already established by a final judgment (issued on January 2018).
Conclusion	The Supreme Court upheld the appeal and annulled the Court of Appeal' s decision.
Case reference (court, decision number and date)	<b>Supreme Court (Corte di Cassazione) criminal case-law No. 34393 of June 7, 2017</b>
Main issue of the case	Access to legal aid for children and the criteria for identifying the competent jurisdiction.
Summary of the facts	<p>The mother of the child L.S., offender in the criminal proceedings No. 20/2016 r.g. GUP, sought an appeal before the Tribunal of Taranto against the rejection decree of the request for legal aid issued by the judge for preliminary hearings (GUP) of the Juvenile Court on May 17, 2016.</p> <p>The Tribunal of Taranto upheld such appeal.</p> <p>Then, the Public Prosecutor of the Juvenile Court of Taranto lodged an appeal at the Supreme Court against the decision issued by the Tribunal of Taranto, arguing that such decision constituted an infringement of Article 99, Paragraph 1, of the Presidential Decree 115/2002, since competent for such criminal proceedings should have been the President of the Juvenile Court (<i>Tribunale per i minorenni</i>) or juvenile divisions of the Court of Appeal (<i>sezioni per i minorenni della Corte di Appello</i>)</p>

	to which the judge for preliminary hearings which have rejected the legal aid submission belonged.
Summary of the findings	<p>The Supreme Court stated that Juvenile Courts (<i>Tribunali per i minorenni</i>) and juvenile divisions of the Courts of Appeal (<i>sezioni per i minorenni delle Corti di Appello</i>) have jurisdiction in matters involving minors where the ordinary courts are not competent.</p> <p>Namely, according to Article 99, Paragraph 1, of the Presidential Decree 115/2002, in case of a crime committed by a child competent for such criminal proceedings is the President of the Juvenile Court (<i>Tribunale per i Minorenni</i>) or juvenile divisions of the Courts of Appeal (<i>sezioni per i minorenni delle Corti di Appello</i>) to which the judge for preliminary hearings which have rejected the legal aid submission belonged.</p>
Conclusion	The Supreme Court upheld the appeal, annulled the decision issued by the Tribunal of Taranto and remitted to the President of the Juvenile Court of Taranto to make the final decision.
Case reference (court, decision number and date)	<b>Supreme Court (Corte di Cassazione) criminal case-law No. 12966 of December 12, 2012</b>
Main issue of the case	Formal and substantive requirements applicable to legal aid' s requests.
Summary of the facts	In 2012, the Justice of the Peace ( <i>Giudice di Pace</i> ) of San Benedetto del Tronto revoked the access to legal aid for a child, victim in criminal proceedings, following certain investigations made by the Italian Tax Agency ascertaining that the victim' s family taxable income for the fiscal year 2009 exceeded the legal threshold provided by Italian laws to be eligible for legal aid.

	<p>Then, the parents of the child L.S. lodged an appeal at the Supreme Court against the decision issued by the Justice of the Peace (<i>Giudice di Pace</i>) of San Benedetto del Tronto arguing that:</p> <p>the obligation of the self-certification of income was duly accomplished by the victim according to Article 79, Paragraph 1, lett. d), of the Presidential Decree 115/2002, and such request properly referred to the fiscal year 2010 since the legal aid' s request from the claimant was submitted actually on February 15, 2011; the victim' s family taxable income for year 2010 did not exceed the legal threshold provided by applicable laws to be eligible for legal aid in criminal proceedings.</p>
<p>Summary of the findings</p>	<p>Under Italian law, formal and substantive requirements apply to legal aid' s requests. A claimant must allege evidence concerning the lack of economic means. The request must be addressed in a written form and signed by the person concerned. Failure to do that is a reason to consider the request barred. Furthermore, requests for legal aid may be rejected in case the applicant' s request appears to be clearly unfounded. These requirements apply generally to legal aid' s requests.</p> <p>As a consequence, the Supreme Court upheld the appeal stating that individuals whose taxable income, resulting from the latest declaration, does not exceed the threshold provided by applicable laws to be eligible for legal aid in criminal proceedings, can be granted legal aid. The Presidential Decree 115/2002 regulates in detail the manner of submitting the request for legal aid, exclusions and calculation of the taxable income which qualifies for legal aid.</p> <p>In such case, considering that the legal aid' s request from the claimant was submitted actually on February 15, 2011 it is correct that the same request properly</p>

	<p>referred to the fiscal year 2010 (and not year 2009) when the victim' s family taxable income did not exceed the threshold provided by applicable laws to be eligible for legal aid.</p> <p>Therefore, the Supreme Court annulled the above-mentioned decision and remitted to the same judge to make the final decision according to the substantial and formal criteria stated by the Supreme Court.</p>
Conclusion	The Supreme Court upheld the appeal, annulled the decision and remitted to the same judge to make the final decision.
Case reference (court, decision number and date)	<b>Supreme Court (Corte di Cassazione) criminal case-law No. 31964 of April 20, 2010</b>
Main issue of the case	Formal requirements applicable to legal aid' s requests: subscription of the legal aid' s request by the holder of the parental authority.
Summary of the facts	<p>On April 27, 2009, the Juvenile Court of Naples rejected the appeal lodged in the interest of P.G., a child involved in two criminal proceedings 12/2008 according to which the judge of preliminary investigation (GIP) had revoked the access to the legal aid for a child with reference to criminal proceedings R.G. PMM 1688/08 e R.G. PMM 1879/08.</p> <p>Then, P.G. lodged an appeal at the Supreme Court against the decision issued by the Court of Naples arguing that:</p> <p>the obligation of the self-certification of income was duly accomplished by the applicant according to Article 79, Paragraph 1, lett. d), of the Presidential Decree</p>

	<p>115/2002 and he had been already admitted to the legal aid for a child in a separate judicial proceeding; the rejection of the legal aid' s request caused the violation of Articles 76 and 79 of the Presidential Decree 115/2002 and of his right of defence in the criminal proceedings.</p>
Summary of the findings	<p>Under Italian law, formal and substantive requirements apply to legal aid' s requests. A claimant must allege evidence concerning the lack of economic means. The request must be addressed in a written form and signed by the person concerned as well as the holder of the parental authority (<i>e.g.</i>, parents, etc). Failure to do that is a reason to consider the request barred.</p> <p>A lawyer must attest the genuineness of the signature. Requests for legal aid may be rejected in case the applicant' s appeal appears to be clearly unfounded.</p>
Conclusion	<p>The Supreme Court rejected such appeal due to the fact that legal aid' s request was not duly signed by the holder of the parental authority, which constitutes an essential and formal requirement applicable to legal aid' s requests.</p>
Case reference (court, decision number and date)	<p><b>Supreme Court (Corte di Cassazione) civil case-law No. 164 of January 5 2018</b></p>
Main issue of the case	<p>Right to legal aid for irregular migrants</p>
Summary of the facts	<p>On January 5, 2018 the Supreme Court published its decision concerning the appeal lodged by a Nigerian citizen against the decision of the Juvenile Court of Naples that had revoked her access to legal aid granted by the bar association on the basis that the applicant was not regularly residing in Italy and was allegedly not</p>

	<p>entitled to benefit from legal aid. The appellant had addressed the Juvenile Court to obtain authorization to stay on the Italian territory on the basis of her son' s best interest.</p>
<p>Summary of the findings</p>	<p>The Supreme Court stated that the concept of "legally residing foreigner" must be interpreted extensively and must include a foreign national who is currently undergoing a judicial (or administrative) proceeding that may result in the granting of a residence permit. Moreover, until the administrative procedure for a residence permit or an asylum procedure is pending, the jurisdictional protection of the foreigner must also be granted by access to legal aid. A foreigner, therefore, can only be considered irregular after an expulsion order, but must exceptionally have his/her right to legal aid recognised when appealing against his/her expulsion.</p> <p>According to the Supreme Court' s decision, legal aid must be ensured not only in the civil or criminal trial but also "in the affairs of non-contentious jurisdiction" , provided that the person concerned "should or can be assisted by a defender" . Legal aid, therefore, is applicable in every civil case, even of non-contentious jurisdiction, and also when the technical assistance of the lawyer is not envisaged as mandatory.</p>
<p>Conclusion</p>	<p>The Supreme Court upheld the appeal, annulled the decision, and remitted to the Juvenile Court of Naples to make the final decision according to the criteria stated by the Supreme Court.</p>

# LA CHILD

Enhancing legal aid for children in conflict with the law



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## Coordination of the project



## Project partners



QENDRA E SHËRBIMEVE  
DHE PRAKTIKAVE LIGJORE TË INTEGRUARA  
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