



# ITALY

### SNAPSHOT

**€87  
MILLION**

ANNUAL EXPENDITURE  
ON CRIMINAL  
LEGAL AID

**€1.45**

PER CAPITA

**€1,000-1,500**

STANDARD LEGAL AID  
FEES PER CASE

It is mandatory to have a lawyer; defendants often go into debt to pay them.

## OUTLINE OF THE LEGAL AID SYSTEM

### HOW IS IT ORGANISED?

The system of criminal legal aid in Italy is not unified or managed by one central body. Instead, it operates as an *ex officio* appointment system. If a suspect or defendant does not have a lawyer, the prosecuting authority – the police, prosecution or judge—will request the Bar Association to appoint one. These *ex officio* lawyers are not free and they will only be paid by the State if the suspect or defendant is indigent and meets the threshold for the means test.

A key characterizing feature of Italian criminal law is that it is mandatory to have a lawyer at all stages of all criminal proceedings. This is rigorously applied: a person generally cannot represent themselves during the investigation, trial, or appeal, and can be assigned a lawyer against their will. Without a robust legal aid scheme, this results in a situation where many poor defendants go into debt to pay for their lawyer.

### HOW IS IT FINANCED?

The Ministry of Justice finances the provision of legal aid to indigent defendants. The total criminal legal aid budget is €87 million per year, or €1.45 per capita.

Lawyers' fees are determined by a decree from the Ministry of Justice which provides for a minimum and maximum fee for every professional act a counsel may perform. The fee for legal aid is low; a legal aid lawyer can expect to earn €1,000-1,500 for a simple case of three to five hearings whereas a private lawyer could expect to earn €4,000-5,000 for the same case. Legal aid lawyers also complain that judges can cut the fees presented at the end of each stage of criminal proceeding. Remuneration is so low that many lawyers refuse appointment, and those who do accept appointment may lack the funds or motivation to conduct a thorough investigation of the case.

### HOW IS IT MONITORED?

Without a central body to administer and manage legal aid, it is difficult to ensure monitoring of legal aid services and quality assurance. The Bar Association and the Penal Chamber (a private association that many criminal lawyers belong to) have codes of conduct and can impose sanctions on a lawyer, but this is rare.

## ELIGIBILITY

### MEANS AND MERITS TEST

People who earn under €10,776 per year are eligible for legal aid. This low financial ceiling, coupled with the fact that those who do qualify are often unaware that they can apply, results in a very small percentage of defendants accessing legal aid. Although statistics are not collected on the rate of legal aid, it is estimated that just over 2-3 per cent of defendants, not including juveniles, receive legal aid.



# LEGAL AID IN: ITALY

## MAJOR ISSUES WITH LEGAL AID

Whilst all accused persons must be represented by counsel, the low means test **requires many poor defendants to go into debt** to pay for their lawyer. It is estimated that only 2-3% of defendants receive legal aid.

**Low remuneration** means that many lawyers refuse appointment and those who do accept a case may lack the funds or motivation to conduct a thorough defence.

**Lack of quality control mechanisms.**

When a person earns above this financial threshold, even slightly, they are not entitled to any legal aid but they cannot choose to defend themselves. They must accept the lawyer appointed *ex officio* to them and they must pay that lawyer's fees. This puts a strain on both the defendant and the lawyer. Defendants may have to go into debt to pay for a lawyer that they did not choose or want appointed to them, and lawyers may have to take time-consuming steps such as having to sue their clients for payment.

## THE REALITIES OF ACCESS TO LEGAL AID

### ACCESS TO LEGAL AID DURING INVESTIGATIVE STAGE

Suspects have the right to a lawyer from the earliest point of proceedings, the commencement of the criminal investigations. In some parts of the investigation, the presence of a lawyer is mandatory. This includes when a person under arrest is questioned by the judge, or when a suspect is called by the police to be questioned. Preliminary hearings must also be conducted with the attendance of counsel. Other investigative acts such as the prosecutor's interrogation of the suspect and personal searches can legally be performed without the presence of a lawyer, but it is very unusual for the lawyer not to attend.

### QUALITY OF LEGAL AID AND EFFECTIVE CRIMINAL DEFENCE

There is a general lack of quality control on the legal profession in Italy. The mandatory nature of legal assistance gives rise to a situation where what matters is that a lawyer was present, not whether the lawyer was prepared and sufficiently skilled to perform his or her duty. For example, at trial, the judge has the power to appoint an *ex officio* lawyer on the spot if the accused does not have a lawyer. The judge will ask if one of the lawyers in the courtroom is willing to accept the defence of a person without counsel, and usually someone will volunteer.

Poor remuneration leads to concerns about the quality of legal aid lawyers. However, there is generally a strong legal culture of criminal defence and some lawyers routinely accept legal aid cases on ethical grounds despite the state remuneration being lower than what they could earn applying the normal fees. The *Giuristi democratici* (Democratic Jurists) is an association of lawyers dedicated to taking legal aid cases and improving the legal aid system, and its members are regularly appointed *ex officio* across Italy.



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