



Pro Bono Practices and Opportunities in Italy

INTRODUCTION

In Italy, the U.S. notion of pro bono public legal services does not exist. Moreover, pro bono work is not a common practice, notwithstanding that large global law firms have recently started to engage in such activities. It appears that pro bono work simply is not part of the legal culture or framework in Italy. Pro bono activities are instead primarily restricted to legal assistance given to non-profit entities or individuals who cannot pay for legal services based on ethical and social motivations.

Notwithstanding the above, certain professional organizations (e.g. local bar associations or notaries' associations) sometimes provide very basic legal information to guide citizens before they wish to contact a lawyer. Such services, which do not include legal advice, are aimed at providing a general overview of the citizens' rights and obligations in the case of the appointment of a legal professional or participation in a legal act. The Italian legal system also provides for state-funded legal aid for those unable to afford a lawyer in judicial matters.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The primary source of law in Italy is the Italian Constitution, which was enacted in 1947 and subsequently amended. The Constitution contains: (i) certain organizational provisions that regulate the existence, nature and duties of governmental bodies; and (ii) the main principles on which the Italian Republic was established. The Constitution is binding for all private and public persons, as well as governmental authorities (including the Parliament), and may be amended only through a complex two-phase process which involves both the Senate and the Chamber of Deputies.

Below the Constitution (which prevails over any other source of law), the sources of law are national laws, regional laws, rules and customary habits. In case of inconsistency, any such source prevails over the next source of law (i.e. national laws prevail over regional laws, etc). Regional laws and rules are limited in scope, and apply only in cases expressly provided for by the Constitution or national laws. Customary habits have limited application.

The Italian legal system is based on civil law, which originated from Roman Law, and its core principles are codified into a written system of rules which are organized in a hierarchy. In the civil law system the statutory laws prevail over case law, which is secondary and subordinate. Judges in civil law jurisdictions only have the power to apply the law to the specific case, and they are not obliged to respect the precedent established by prior court decisions.

The Courts

Types and levels of courts

There are three categories of courts with different jurisdiction in Italy: (i) the Constitutional Court; (ii) the ordinary courts; and (iii) the special courts.

- The Constitutional Court is competent to handle: (a) decisions concerning the constitutionality of legal provisions; (b) disputes in relation to the division of powers of the state bodies; and (c) procedures against the President of the Republic.
- The ordinary courts are composed of judges competent to handle general civil and criminal matters (save for some matters reserved to the jurisdiction of special judges, as briefly listed under point (iii) below). The ordinary courts are structured into three levels:
- Courts of First Instance (*Tribunale*). In the Courts of First Instance, certain specialized departments have been created to adjudicate on matters which require a specific expertise (e.g. corporate and intellectual property matters, agrarian matters).



- Courts of Appeal (*Corte di Appello*). This Court has competency over appeals against the decisions of the Courts of First Instance.
- The Court of Cassation (*Corte di Cassazione*). This Court is the highest court in Italy, having competency over appeals solely on issues of law concerning the judgments of the Courts of Appeal and challenges over the jurisdiction raised in any procedure carried out in any Italian court.

The Courts of First Instance and the Courts of Appeal exist on a local basis, while the Court of Cassation is one court for the entire country and is located in Rome.

- The special courts have jurisdiction, for instance, in the following matters:
- Regional Administrative Courts for administrative matters (*Tribunali Amministrativi Regionali*) whose decisions can be appealed before the Council of State (*Consiglio di Stato*);
- State Auditors' Department (*Corte dei Conti*) for matters regarding public accounts;
- Provincial Fiscal Commissions (*Commissioni Tributarie Provinciali*) for tax-related matters;
- Military Courts (*Tribunali militari*) for military matters; and
- the High Court for public waters (*Tribunale superiore delle acque pubbliche*) for matters regarding the regime of public waters.

Appointed judges

Ordinary jurisdiction is given in Italy to judges appointed following a public selection process. Such judges are public employees. In certain cases, also honorary judges may exist, who are not public employees and provide a temporary service on a gratuitous basis (e.g. *giudice di pace*). Their competence is limited by value or subject matter. The members of the Constitutional Court are elected by the President of Italy, the Parliament and by the higher courts (i.e. the Court of Cassation, the Council of State and the State Auditors' Department).

The Practice of Law

Education

Italian students who wish to enter the legal profession must study law at the Faculty of Law (*Facoltà di Giurisprudenza*) in one of the Italian universities. The academic course lasts five years, during which the future lawyer (*Avvocato*) will study the basis of Italian and international law.

The new Regulation for the Organization of the Legal Profession (Law no. 247 of December 31, 2012) sets out the new rules necessary in order to become an Italian lawyer. After graduation from the Faculty of Law, the trainee-lawyer (*Praticante Avvocato*) must complete a legal traineeship with the aim of learning the skills and knowledge needed for practising law as well as for learning the ethical principles of the legal profession. No pro bono requirements are set by the National Bar Association (*Consiglio Nazionale Forense*) during the legal traineeship. The trainee-lawyer must be registered at the Register of the Trainee-lawyers before starting the traineeship, which lasts for 18 months under the supervision of a qualified lawyer (with at least five years of practice after their qualification). The traineeship could also be completed at the Government Legal Service (*Avvocatura dello Stato*) or, for no longer than six months, under the supervision of a foreign lawyer outside the Italian territory.

Having successfully completed the formative practice, the candidate must obtain a certificate at the end of the traineeship before taking the State Examination for the Qualification to the Profession of Lawyer (*Esame di Stato per l'abilitazione all'esercizio della professione di Avvocato*). The examination consists of three written exams (one in civil law and one in criminal law and one judicial act) and after passing the three written exams, the candidate will then be eligible to take the oral examination. During the oral part, the candidate will be examined by a commission of lawyers and judges on several subjects. Upon passing this examination, the commission will then issue the Certificate for the registration to the Order of Lawyers (*Ordine degli Avvocati*). When the newly qualified lawyer takes the oath and is successfully registered to the Order of the relevant district, they can legitimately start practising in the legal profession.

Licensure

Under Italian law, legal services carried out by lawyers are considered to be intellectual activities and, therefore, such legal services are regulated by the provisions of article 2229 and lawyers must follow the



Italian Civil Code (the “**ICC**”). In particular, the ICC states that: (i) the amount of remuneration shall be commensurate with the importance of the services and with the dignity of the profession; and (ii) if the activity involves technical difficulties, the professional is liable for such activity only in case of gross negligence or wilful misconduct.

In addition, lawyers’ activities must be carried out in compliance with the provisions of the Italian Code of Professional Conduct and Ethics (last amended in 2014) (the “**Professional Rules**”), which, amongst other things, provides for the duties of integrity, dignity, honesty and fairness, as well as a prohibition on the poaching of clients and requesting compensation not comparable with the legal assistance effectively rendered. The Professional Rules are issued by the National Bar Association (*Consiglio Nazionale Forense*), which is the national institution representing lawyers in Italy. In addition, the National Bar Association is competent to hear appeals of the disciplinary decisions made against lawyers issued by local Bar Associations.

The local Bar Associations are located in any city where a Court of First Instance is present and competent, *inter alia*, for access to the Bar and for disciplinary actions against attorneys not acting in compliance with the Professional Rules. In addition, local Bar Associations manage and organize seminars and courses aimed at updating attorneys in their profession.

Demographics

In Italy, the number of lawyers (approximately 247,000) is impressively high in comparison to the total population (approximately 60 million). Lawyers are largely located in the main Italian business centers, such as Rome, Milan and Turin, and also industrial cities in northern Italy.

Traditionally, Italian lawyers worked as sole practitioners or in small-size or family-based firms providing legal services in various areas of law (i.e. both criminal and civil law). Nowadays, large Italian and international law firms have entered into the Italian legal market providing specific legal services – mainly focused on corporate and business law – to banks, funds and corporations, and are mainly located in Milan and Rome. However, generally speaking, the Italian legal market is still primarily comprised of sole practitioners or small-size firms.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Section 24(3) of the Italian Constitution guarantees the fundamental right to proper representation in court.¹ In the past, the protection of the right enshrined in section 24(3) of the Constitution was guaranteed by a system of “free legal representation” (*gratuito patrocinio*).²

When called upon by a specific commission or the president of the competent court, attorneys were required to provide free legal services to indigents who had meritorious claims. Under the law in force at the time, free legal representation of indigents was considered an attorney’s “honorary and mandatory task”. However, such a system did not work properly as indigents often received inadequate and inferior legal services from lawyers who lacked the commitment to their cases. In 1973 this system was abrogated and replaced by a new system of state-funded legal aid, called “*patrocinio a spese dello stato*”.

Under this new system, which was intended to effectively implement section 24(3) of the Constitution and ensure access to legal assistance, the Italian state bears the cost of in-court legal representation of indigents in civil, administrative and criminal cases, subject to certain eligibility criteria (described in subsection B. below). It should be noted that such state-funded legal aid is available at all levels of jurisdiction, including all further connected incidental and/or contingent proceedings, but not for out-of-court negotiations.

¹ Pursuant to section 24(3) of the Constitution, “[i]ndigents shall be entitled, through special legislation, to proper means for action or defence before any court.”

² See Royal Decree No. 3282 of Dec. 23, 1923.



As to the procedure, applications for state-subsidized legal aid in criminal cases are addressed to the chancellor's office of the court before which the case is pending. In all other cases, the request is addressed to the Bar, specifically to the Council or governing body of the Bar of the district where the competent court is located or where the case is already pending. According to the website of the Ministry of Justice, the competent criminal court or the Bar, as applicable, decides on the admission to legal aid within ten days from the filing of the relevant application. Where the applicant is declared eligible, the applicant (a person or non-profit organization) can designate and appoint a defence lawyer of their choice, provided that such designated attorney is registered for legal aid on a dedicated list with the relevant local courts. Registration is conditional upon meeting certain requirements, including membership with the Bar for at least two years,³ and the list of registered attorneys is updated every year and made available to the public.

State-Subsidized Legal Aid

State-funded legal aid is available to Italian citizens, non-Italian citizens and stateless individuals that, under the applicable laws, satisfy specific objective requirements⁴, such as needing legal aid in cases that have a clear legal basis. In criminal cases, legal aid is available to non-Italian citizens regardless of their immigration status, whereas in civil and administrative cases, residency in the country is required.⁵ Non-profit associations and entities that do not carry out business activities are also entitled to state-funded legal aid, but only in civil and administrative cases.

In particular, in order to qualify for state-funded legal aid, an individual's annual taxable income must not exceed a certain threshold, which is set every two years by a decree of the Ministry of Justice.⁶ Such threshold varies in accordance with the consumer price index for employees and workers ascertained by the Italian National Institute of Statistics.⁷ In this respect, both the civil and criminal courts calculating the relevant taxable income also take into account the income of any family member living with the applicant (including spouses and cohabitants). This rule however does not apply in civil or criminal proceedings relating to so-called "rights of the personality" (*diritti della personalità*) or where there is conflict between the interests of the individual applying for legal aid and his or her family members.

In addition to the abovementioned eligibility criteria based on potential success, immigration status and financial means, the access to state-funded legal aid in criminal proceedings is subject to limitations depending on the type of the offence. For instance, no state-funded legal aid can be granted in the case of criminal proceedings relating to tax fraud, mafia conspiracy or drug trafficking in connection with mafia organizations.

Mandatory assignments to Legal Aid Matters

Private attorneys can choose whether to register in the lists specifically held by the local courts for the purposes of providing legal aid services. Individuals eligible for legal aid can then choose a defence lawyer from that list.

The fees and expenses due and payable to the attorney providing legal aid are determined by a ruling of the court that decides the case. When determining the amount of such fees and expenses, the court takes into account the nature of the task relating to the assigned matter, both in terms of quality and

³ See Section 80 of the Decree of the President of the Republic No. 115 of May 30, 2002, as amended by section 2 of Law No. 25 of February 24, 2005.

⁴ See Judgment No. 219 of June 1, 1995 of the Constitutional Court.

⁵ See Judgments No. 2684 of March 10, 2003 of the Supreme Civil Court and No. 144 of May 14, 2004 of the Constitutional Court.

⁶ As of the date of this survey, an individual may have access to state-subsidized legal aid provided that his or her annual taxable income does not exceed Euro 11,369.24.

⁷ See Section 77 of the Decree of the President of the Republic No. 115 of May 30, 2002.



quantity. However, the amount of such fees and expenses may not exceed the average amount set by the relevant Ministerial Decree for equivalent professional activities. In civil, administrative and tax law proceedings, if the legal aid beneficiary wins the case, the court may order the losing party to refund the Italian state the fees paid to the attorney representing the indigent party.

The below table summarizes the number of requests and admissions to legal aid for criminal proceedings in Italy,⁸ together with the relevant costs:

| Year | Requests | Admissions | Total costs (€) | Legal fees (€) | Other costs (€) |
|------|----------------|----------------|-------------------|----------------|-----------------|
| 2013 | 150,903 | 129,354 | 100,854,891 | 93,444,275 | 7,410,617 |
| 2012 | 137,932 | 117,493 | 99,766,065 | 93,110,831 | 6,655,234 |
| 2011 | 129,944 | 111,163 | 95,664,056 | 90,759,086 | 4,904,969 |
| 2010 | 121,592 | 104,170 | 88,385,214 | 83,952,626 | 4,432,588 |
| 2009 | 112,241 | 95,457 | 87,595,773 | 84,076,240 | 3,519,533 |
| 2008 | 113,632 | 98,594 | 86,908,775 | 82,872,503 | 4,036,272 |
| 2007 | 111,091 | 97,951 | 87,867,315 | 82,353,157 | 5,514,158 |

Alternative Dispute Resolution

Various alternative dispute resolution schemes are also available in Italy, including mediation, arbitration and the banking ombudsman, which can be more timely and cost-effective at resolving disputes. In particular, pursuing complaints against banks or financial intermediaries through the banking ombudsman (*Arbitro Bancario Finanziario*) is a free service.

Legal aid is only available for mediation and only in respect of certain cases. In fact, in 2013 mediation became mandatory for any civil case relating to, *inter alia*, the following matters: condominium, real estate and related rights, inheritance, insurance policies, banking, rents, damages relating to medical liability and libel. Legal aid is therefore available in relation to civil cases relating to such matters.

PRO BONO ASSISTANCE

Pro Bono Opportunities

The primary means for attorneys who wish to provide legal assistance to persons who cannot afford such services is through the State's legal aid system or working for global or local law firms that offer pro bono legal services (such as, *inter alia*, Latham & Watkins, Linklaters, Clifford Chance, Cleary Gottlieb Steen & Hamilton, Bonelli Erede Pappalardo and Gianni Origoni Grippo Capelli). It is not mandatory for attorneys to do or report on pro bono.

Pro bono legal services can also be offered to non-profit associations pursuing social objectives, non-governmental organizations ("NGOs"), charitable organizations and foundations for non-judicial matters, provided that the pro bono work is carried out in accordance with the abovementioned Professional Rules governing the legal profession in Italy.

Moreover, pro bono legal advice is currently offered in Italy by lawyers who are members of certain non-profit associations, NGOs and charitable organizations to individuals belonging to certain "vulnerable categories" such as, *inter alia*, victims of domestic violence, minors and asylum seekers.

⁸ The data available on the website of the Ministry of Justice relates to criminal proceedings only.



Historic Development and Current State of Pro Bono

Barriers to Pro Bono Work and Other Considerations

There are several barriers to, and other considerations regarding, pro bono work under Italian law and the Professional Rules.

Laws and Regulations Impacting Pro Bono

On August 2, 2006, Law decree No. 223 (the “**Bersani Decree**”) became law. The Bersani Decree was designed to address competition concerns within the Italian legal market.

Specifically, the Bersani Decree: (i) abolished statutorily fixed and minimum attorneys’ fees; (ii) lifted the prohibition on contingency fees;⁹ and (iii) permitted lawyers to advertise their title, professional specialization, the characteristics of their services, and the cost of their professional services.¹⁰ These reforms created the possibility for competitive pricing of legal services in Italy and removed, albeit unintentionally, the major obstacle to pro bono services in Italy – namely, statutorily imposed minimum attorneys’ fees.¹¹ While this law did trigger controversy in Italy, the removal of minimum attorneys’ fees had no effect on the level of pro bono services in Italy – that is, pro bono legal services still did not become part of the Italian legal culture.¹²

In January 2012, Italian legislators enacted Law Decree no. 1/2012 (the so-called “**Liberalizzazioni Decree**”), as amended by the Law No. 27/2012, to further remove the barriers preventing free competition in the Italian legal services market and ensure transparency regarding the chargeable fees to clients. In particular, the Liberalizzazioni Decree: (i) entirely abolished statutory attorneys’ fees; and (ii) expressly stated the principle of freedom of the parties in determining the applicable fees for legal services. However, the details of such fees have to be provided in writing to the client in advance, generally in the engagement letter, in order to avoid unexpected costs for the services to be provided. It should be pointed out that if attorneys fail to indicate such costs any different agreement regarding the applicable fees is null and void.

⁹ The Bersani Decree also abrogated the third paragraph of section 2233 of the ICC and provided that legal fee agreements between lawyers and their clients must be in writing, or will be deemed null and void.

¹⁰ Such advertising is permissible provided that the advertisements satisfy a standard of transparency and truthfulness verified by the Bar Association (Ordine degli Avvocati). Such advertising, however, should not include clients’ names (even with the client’s authorization), price for services, and number of cases won or the turnover generated by the attorney or the firm. Advertising should be limited to information such as the attorneys’ names and publications.

¹¹ Historically, minimum fees effectively prevented attorneys from engaging in genuine pro bono work. There was an exception - an attorney could provide services for a fee below the statutory levels when the minimum fees were excessive in light of the specific circumstances of the case. However, attorneys could only utilize this exception with authorization from the Bar on a case-by-case basis and the exception could never be applied to criminal cases. According to the Corte di Cassazione (i.e. the Italian Supreme Court), the mandatory nature of the minimum fees was justified by the need to “protect the dignity of the legal profession from the harmful consequences” of “price competition” among attorneys (see Judgment No. 592 of Mar. 22, 1962, of the Corte di Cassazione), as there is a widespread belief that price competition affects the integrity of the Italian legal profession. Similar beliefs led to the explicit prohibition of contingency fees. See ICC Section 2233(3).

¹² It is important to note that the motivation for the Bersani Decree did not stem from pro bono concerns. Instead, the rationale for the reform was to address changes in the legal profession, such as the globalization of legal services and the anti-competitive nature of the older minimum fee system. The EU had also frowned upon the minimum fee system, noting that the anti-competitive nature of the system was at odds with the EU’s longstanding policy of promoting competitive behavior. See European Parliament Resolution, Market Regulations and Competition Rules for the Liberal Professions, Dec. 16, 2003; see also the conclusion of the General Advocate of the European Court of Justice delivered on Feb. 1, 2006 in the case C-94/04 (Federico Cipolla v. Rosaria Fazari née Portolese – reference for a preliminary ruling from the Appeal Court of Turin), and in the case C-202/04 (Stefano Macrino and Claudia Capodarte v. Roberto Meloni - reference for a preliminary ruling from the Court of Rome), stating the non-compliance of the Italian legislation concerning the fixing of lawyers’ minimum fees with the competition rules and the principle of freedom to provide services established by the EU regulation.



The Liberalizzazioni Decree does not expressly mention pro bono work. Until there are concrete applications of the abolition of statutory attorneys' fees towards the legal framework and principles governing the pro bono services, it is unclear what effect the Liberalizzazioni Decree will have on pro bono work.

Furthermore, under the principles governing legal activity in Italy provided by the Professional Rules, lawyers cannot carry out any conduct directed at the acquisition of client relationships by means not conforming to principles of propriety and decorum (including the offer of legal services free of charge in breach of the principles connected to the fair competition among attorneys).

Scholars and case law have interpreted the Professional Rules to allow the provision of free legal services if they are ethically or socially motivated (because the Professional Rules do not allow attorneys to provide free legal services with the purpose of achieving business through the unlawful poaching of clients). Accordingly, pro bono work in Italy is currently mostly limited to non-profit organizations, NGOs, charitable organizations and foundations unable to pay for legal services, in order to realize their ethical and social purposes.

In recent years, Law No. 148/2011 and Presidential Decree No. 137 of August 7, 2012 set forth an obligation for all lawyers registered with the National Bar Association, effective from August 2013, to enter into certain insurance policies aimed at covering professional liability for possible damages suffered by clients in connection with the exercise of professional legal activities. The implementing regulations, which are to be issued by the Ministry of Justice in consultation with the National Bar Association in order to set out the requirements and limits of mandatory insurance coverage have not yet been adopted. Therefore, it is uncertain at this time whether professional liability insurance for legal professionals will be generally available also in relation to pro bono legal services.

Tax implications

In Italy, services supplied by professionals (such as lawyers) without consideration are not taxable under Italian VAT law.¹³ This law has been interpreted to exclude tax services provided by professionals free of charge from the VAT. This conclusion (namely, that free legal services are not subject to VAT) is shared by Italian scholars and is consistent with the European Court of Justice jurisprudence, according to which it is necessary to have a direct link between the service supplied and the consideration received.

It should be noted that, if pro bono legal assistance is provided on the basis of a symbolic fee or it is recognized by the attorney to be a mere reimbursement of expenses, the service supplied by the lawyer should be considered in principle as taxable. However, if the lawyer requests a reimbursement of expenses incurred in the name and on behalf of the customer (i.e. the NGO), this payment is not relevant for VAT purposes.

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Taken together, national laws and the Professional Rules, while not directly opposing pro bono work, do not set forth clear or detailed rules for pro bono legal services. As a consequence, traditionally, Italian lawyers do not consider pro bono services to be part of practising law and pro bono activities are carried out by lawyers in the absence of an adequate regulatory and tax framework, and face the potential risk of being accused of breaching principles connected with fair competition.

Despite the above, more recently, international and local large law firms offer pro bono services. However, such services have to be offered in compliance with the applicable legislation and the Professional Rules setting forth, *inter alia*, limits for advertising the activity of attorneys, which accordingly restrains the size of pro bono work carried out in Italy. Also foreign-qualified lawyers that intend to offer legal services in Italy and in-house counsel must comply with the aforementioned applicable legislation and Professional Rules which provides, *inter alia*, that certain legal services – in particular, legal assistance in court in litigation cases – can only be provided by Italian lawyers duly registered with the National Bar Association or foreign lawyers who had their qualification recognized in Italy and are therefore fully licensed to practice law in Italy.

¹³ See Article 3 of the Presidential Decree 26 Oct. 1972, No. 633.



Finally, as far as pro bono litigation cases are concerned, it should be noted that certain inefficiencies of the Italian judicial system – in particular, the excessive length of court proceedings and the number of bureaucratic formalities related thereto – affect the effectiveness of pro bono legal assistance and produces delays and inefficiencies that prejudice the possibility of pro bono clients receiving a prompt satisfaction of their rights.

Pro Bono Resources

The following organizations may provide pro bono referrals and opportunities for lawyers, including foreign lawyers, to participate in education and research activities:

- Ministry of Justice: <https://www.giustizia.it/giustizia> (last visited on September 4, 2015)
- Italian Bar Association (www.consiglionazionaleforense.it (last visited on September 4, 2015)); and for cities where legal services are mostly provided:
- Milan Bar Association – www.ordineavvocatimilano.it (last visited on September 4, 2015)
- Rome Bar Association – www.ordineavvocati.roma.it (last visited on September 4, 2015)
- Turin Bar Association – www.ordineavvocatorino.it (last visited on September 4, 2015)
- Recognition of foreign qualifications: <http://www.consiglionazionaleforense.it/site/home/area-avvocati/riconoscimento-titoli-stranieri.html> (last visited on September 4, 2015)

CONCLUSION

Italian attorneys generally do not engage in pro bono legal services, as it is not part of the Italian legal culture. However, some global and large local firms as well as individual attorneys provide free legal services to indigent persons (not always being reimbursed for their services by the Italian government under Italy's legal aid system) in judicial matters, and to non-profit entities for deserving projects in non-judicial matters.

Although statutorily mandated attorneys' fees were repealed, Italian attorneys largely have not embraced this change as an opportunity to engage in pro bono legal services. One contributing factor is that the legal framework and professional rules governing legal activity in Italy do not clearly support or sponsor pro bono work.

Finally, it remains to be seen whether new EU regulations will effectively create a pro bono obligation for lawyers practising in the EU member states. Not only could this create an obligation in Italy, but it could strongly affect the current Italian legal culture in relation to pro bono legal services.

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