



Press Release of 20 January 2022

LEGAL AID MUST BE GRANTED ALSO FOR COMPULSORY MEDIATION THAT RESULTS IN A FAVOURABLE OUTCOME

Legal aid must be guaranteed to persons without sufficient financial resources also within compulsory mediation proceedings that result in a favourable outcome. This is in fact an expense that is constitutionally necessary to ensure the efficacy of the inviolable rights to a trial and to a defence.

That's what be established by the Constitutional Court in [judgment no. 10](#) filed today (author Luca Antonini), which held that the current legislation on legal aid is unreasonable and violates the right to a defence insofar as it does not provide that this benefit must be granted to persons without sufficient financial resources also in relation to defensive activities carried out in their behalf within compulsory mediation proceedings that result in a favourable outcome.

Articles 74(2), 75(1) and 83(2) of Decree of the President of the Republic no. 115 of 2002 were ruled unconstitutional, to the reasons indicated above.

The judgment explains that it is unreasonable to impose a procedure in relation to particular matters that has the goal of relieving the burden on the courts, whilst not however at the same time recognising entitlement to legal aid precisely where these goals have been achieved: this could operate as an incentive not to reach agreement – and deliberately so – during the mediation phase in order to refer the matter to the courts for the sole purpose of obtaining the payment of representation costs by the state once the trial proceedings have been launched. This would frustrate the goal of mandatory mediation of relieving the burden on the courts.

Moreover, the Court also held that, in establishing a procedure as mandatory, which may even condition the exercise of the right of action, whilst at the same time failing to ensure the opportunity for persons without sufficient financial resources to obtain legal aid, the legislation violated the right to a defence.

The Court went on to hold that where a “legislative choice goes so far as to prevent a person without sufficient financial resources from having effective access to justice”, this “clearly has a bearing on the full development of the individual (Article 3(2) of the Constitution) and the overall schema of the inviolable right to a trial as provided for under the first two paragraphs of Article 24 of the Constitution”.

In such a scenario, the Court continued, these are “constitutionally necessary expenses” and “the argument based on budgetary equilibrium loses cogence in view of the possibility for the legislator to decide, as the case may be, to reduce expenses that do not have the same priority status: along the same lines, this Court has held that it is the guarantee of inviolable rights that must condition the budget, whilst conversely the need for budgetary equilibrium cannot condition the guarantee of those rights”.

Rome, 20 January 2022