

ACCESS TO JUSTICE FOR CHILDREN: ITALY

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The CRC has been ratified by Italy and incorporated into domestic law.

International instruments, such as the CRC, do not automatically have the force of law in Italy. International treaties are implemented through legislation adopted by the Italian Parliament, which reformulates the provisions of the international treaty and converts those provisions into domestic law. Alternatively, treaties can be implemented through the adoption of an “execution order” of the international treaty, where the treaty text remains unchanged and is attached to the execution order. Such treaties are placed on the same level as national law and below the Constitution within the hierarchy of the Italian legal system. As such, they become part of domestic law.¹

B. Does the CRC take precedence over national law?

In the case of a conflict between provisions of the CRC and the Constitution, the Constitution prevails. Otherwise, domestic courts generally interpret national law in accordance with international law obligations. Thus, domestic courts should interpret national law in accordance with the CRC. If a conflict cannot be resolved by way of interpretation, domestic law would prevail unless the CRC provisions are customary international law, part of *jus cogens* or general principles of international law.

C. Has the CRC been incorporated into national law?

The CRC has been adopted and incorporated into national law in its entirety by the Italian Parliament through Law No. 176 of 27 May 1991.²

D. Can the CRC be directly enforced in the courts?

The CRC can be enforced in domestic courts through Law No. 176 of 27 May 1991, which incorporates the CRC into national law.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been cited several times by the Italian Constitutional Court, although not directly applied. For instance, the CRC has been discussed and cited in the context of providing the same annuity for a child with unmarried parents as a child with married

¹ See Constitutional Court, 24 October 2007, Judgment Nos. 348 and 349.

² Law No. 176 of 27 May 1991.

parents;³ informed consent from a parent or a guardian for the administration of psychoactive drugs to a child;⁴ and the age of criminal responsibility of a child.⁵

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Article 24 of the Constitution provides that all persons are entitled to take legal action to protect their individual rights and legitimate interests. Accordingly, children and/or their representatives can bring legal challenges in a variety of settings in order to protect their rights.

Children and/or their representatives may challenge violations of children's rights by bringing civil claims. In criminal cases, if the crime can be prosecuted without private action, it is the public prosecutor that acts. Otherwise, private actions in criminal cases can be brought by anybody over 14 years of age (see part II.B below).⁶

Acts and decisions of administrative bodies can be challenged through judicial review. Individuals cannot bring cases directly before the Constitutional Court. Instead, judges in lower courts can refer potential violations of the Constitution to the Constitutional Court for consideration (see part III.A below).

Complaints about violations of children's rights can be made to the National Ombudsperson for Children and Adolescents. The National Ombudsperson is an independent institution established by Law No. 112 of 12 July 2011, which is empowered to protect and promote the rights of children according to the CRC and other international instruments. Amongst other functions, it examines and investigates individual complaints about violations of children's rights. Regional Children's Ombudspersons have also been established across several regions, however not all of them are mandated to receive and consider individual complaints.⁷

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

A child is generally required to bring a case to court with the assistance of a parent, guardian or other representative if they have not attained the age of majority (18 years).⁸ Such cases can be brought by the legal representative in the child's name to enforce a right.

However, there are certain exceptions, including:

³ Constitutional Court, 27 March 2009, Judgment No. 86.

⁴ Constitutional Court, 23 December 2008, Judgment No. 438.

⁵ Constitutional Court, 24 July 2007, Judgment No. 322.

⁶ Criminal Code, Article 120.

⁷ UN Committee on the Rights of the Child, *Concluding observations on the third periodic report of Italy*, CRC/C/ITA/CO/3-4, 31 October 2011, para. 12. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2fCO%2f3-4&Lang=en.

⁸ Civil Code, Article 2(1).

- A child who has been “emancipated” (i.e. a child aged 16 or 17 who has entered into marriage by authorisation of a court)⁹ is permitted to perform ordinary transactions, including bringing a case in their own name without the assistance of a representative;
- A child has the capacity to personally bring civil proceedings to exercise rights (including compensation for damages) which flow from their employment contract, starting from the age at which they can undertake employment;¹⁰ and
- A child can lodge a complaint to institute criminal proceedings, with or without parental consent, from the age of 14. A child who has reached the age of 14 maintains this right of complaint even if their parent, guardian or special curator has waived this right. For children under the age of 14, this right is exerted by their parent, guardian or *guardian ad litem*.¹¹

Persons exercising parental responsibilities have the right and duty to represent their children, including before domestic courts for violations of the CRC, and to manage their property.¹² In case of the parents’ inability to bring a case on behalf of their child, the child can be represented by someone acting on his/her behalf (for example, a guardian or a “special curator” appointed by the presiding judge).¹³ If representatives are not available, then a judge may choose to hear from the child directly but only on the condition that the child has the capacity to form his or her opinion. The judge will hear from the child directly in all cases where the child’s life or development is affected or it is deemed strictly necessary to hear the child.

Where a person exercising parental authority over a child does not wish to, or cannot, perform acts in the child’s interest, the child has the right to apply directly to the courts for the appointment of a special guardian to perform such acts.¹⁴

C. In the case of infants and young children, how would cases typically be brought?

Such cases would typically be brought by the child’s representative (i.e. parent, guardian, or other representative) (see part II.B above).

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Article 24 of the Constitution provides that indigent persons must be assured, by appropriate measures, the means for legal action and defence in all courts.

To this end, the State tries to provide legal aid/assistance to claimants who have good grounds for their claim. Article 74 of the Presidential Decree No. 115 of 30 May 2002 provides that the State can provide economic assistance (with certain limitations) to those who do not have sufficient means to pay for necessary legal fees. This is discussed further below in part IV.B.

⁹ Ibid., Article 84(1).

¹⁰ Ibid., Article 2(2).

¹¹ Criminal Code, Articles 120, 121 and 125.

¹² Civil Code, Article 320.

¹³ Ibid., Article 346.

¹⁴ Ibid., Article 321.

In criminal proceedings, a child defendant is entitled to the assistance of defence counsel of their choice or appointed by the court.¹⁵ The Bar Council must draw up lists of defence counsel specialised in juvenile law.¹⁶

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There are no other such conditions or limits.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Children and/or their representatives may challenge violations of children's rights by bringing civil claims for damages. Violations that amount to criminal offences can be prosecuted by the State, or by private individuals.

Challenges to administrative decisions can be brought before an administrative court to assess the lawfulness (but not the merits) of administrative decisions. Under the Constitution, the Council of State (*Consiglio di Stato*) must ensure the legality of public administration,¹⁷ and has jurisdiction over acts of all administrative authorities with discretionary power. The Council of State and other administrative courts have jurisdiction for "safeguarding before the public administration legitimate rights and, in particular matters laid out by law, also subjective rights".¹⁸

Challenges to the constitutionality of national legislation can be brought to the Constitutional Court on referral by a judge in a lower court; individuals cannot bring cases to the Constitutional Court directly. The Constitutional Court's jurisdiction includes ruling on controversies and disputes regarding the constitutional legitimacy of the laws and acts having the force of law enacted by the State and the regions.¹⁹ A child whose rights have been violated would bring an action initially before the appropriate lower court. If the presiding judge of that lower court sees a potential violation of the Constitution, that judge has the power to adjourn the hearing in the lower court and refer the question to the Constitutional Court.

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.²⁰ Any

¹⁵ Code of Criminal Procedure, Articles 96 and 97.

¹⁶ *Initial report of Italy to the UN Committee on the Rights of the Child*, CRC/C/8/Add.18, 20 February 1995, para. 237. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.18&Lang=en

¹⁷ Constitution, Article 100.

¹⁸ *Ibid.*, Article 103.

¹⁹ *Ibid.*, Article 134.

²⁰ European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32, available at: <https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,²¹ but the complaint will be admissible only if all domestic remedies have been exhausted.²² Anonymous complaints are not permitted.²³ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.²⁴ After examining the case, the Court renders a judgment which is binding on the State²⁵ and also has powers to award monetary compensation to the victims of human rights abuses.²⁶ It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

B. What powers would courts have to review these violations, and what remedies could they offer?

Italian courts can apply a very broad range of remedies. For example, courts in civil cases can award compensation for damages suffered by the victim. In administrative cases, if a court finds that an administrative decision is defective for lack of jurisdiction, breach of law or abuse of power, it can annul the decision.²⁷ The Constitutional Court can declare a specific provision unconstitutional and thus null and void.²⁸ In child protection cases, courts can take children away from their parents if they are not duly exercising their parental responsibilities and place the children under protection of the Court.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

According to general principles of Italian law, in order to bring an action a specific victim is needed. The victim can bring an action against the person/entity that violated his/her rights. If the victim decides to challenge the national/regional law before the domestic courts, the victim cannot bring an action on a general basis, but he/she can challenge the law only if such law is relevant to his/her specific case. The victim must, therefore, have been directly affected by the potential breach.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Currently, the Italian legal framework provides only for consumers to file a “class action”. In civil cases, victims of children’s rights violations, therefore, cannot bring

²¹ Ibid., Article 34.

²² Ibid., Article 35.

²³ Ibid.

²⁴ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

²⁵ European Convention on Human Rights, Article 46.

²⁶ Ibid., Article 41.

²⁷ ‘The Italian Judicial System’, <http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf>, (accessed 6 February 2014).

²⁸ G. Ferrari & A. Gambaro, ‘The Italian Constitutional Court and comparative law - a premise’, *Comparative Law Review*, Vol. 1, available at: <http://www.comparativelawreview.com/ojs/index.php/CoLR/article/viewFile/3/7>.

class actions.

However, there will be cases in which children file separate actions, which will be heard collectively according to procedural rules of the relevant domestic civil court, if it is deemed that the cases and claims are similar or hinge on the same point or right. If two similar actions are brought before the same court, the judge is obligated to join the two claims. If two similar actions are brought before different courts, it is up to the judges to decide whether to join the two actions.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Non-governmental organisations (NGOs) are not permitted to file challenges to potential violations. In very limited cases, however, there is a possibility of “*enti esponenziali*,”²⁹ which are defined as NGOs, intervening in criminal cases as a “civil party” next to the prosecutor to sue the wrongdoer for monetary damages on behalf of the victim(s).

Italy has ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints,³⁰ meaning that complaints of violations of children’s rights contained in the European Social Charter³¹ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.³² The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of Europe that adopts a resolution and makes a recommendation to the State.³³ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.³⁴

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The venue of the challenge depends on the type of case.

Generally, civil actions are commenced with service of a writ of summons by the claimant on the defendant. The summons is drafted and signed by legal counsel and it must contain all elements necessary to identify the claim and causes of action. After service, the writ of summons must be filed at the court. A Justice of the Peace (*Giudice di Pace*) has jurisdiction over minor claims, while a *Tribunale* has general jurisdiction

²⁹ Code of Criminal Procedure, Articles 91-9f.

³⁰ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

³¹ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

³² Additional Protocol for a System of Collective Complaints, Article 1. See also: http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

³³ Additional Protocol for a System of Collective Complaints, Articles 8-9.

³⁴ Additional Protocol for a System of Collective Complaints, Article 10.

for all civil disputes.

Administrative actions are generally commenced in Administrative Regional Tribunals (*Tribunali Amministrativi Regionali*) at first instance.

Certain civil and administrative matters concerning children that do not have a criminal element may be dealt with at first instance by a juvenile court in the district of the court of appeal where the child resides.³⁵ Juvenile courts have jurisdiction over matters including child abuse, neglect, removal of parental authority, and alternative care.

Conversely, in criminal actions the prosecutor will bring criminal cases before the court, unless private action is required (only in limited circumstances). Criminal cases are heard by a Justice of the Peace, *Tribunale*, or Court of Assizes (*Corte d'Assise*), depending on the seriousness of the offence. Criminal cases involving child defendants are heard in a juvenile court.

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Article 74 of the Presidential Decree No. 115 of 30 May 2002 provides that the State can provide economic assistance (with certain limitations) to those who do not have sufficient means to pay for necessary legal fees. Applicants with insufficient means are entitled to legal aid in all phases of litigation and before any court, including in criminal, civil, and administrative proceedings. In civil and administrative proceedings, applicants must show that their claims are not “manifestly unfounded”.³⁶

In order to qualify for legal aid, the applicant’s income must be below a certain threshold, which is adjusted every two years by the Ministry of Justice. Where the child applicant is living with members of their family, the total family income, including that of the applicant, is taken into consideration. Only personal income is taken into account where personal rights are being challenged or in trials where the applicant's interests are in conflict with those of the members of their family with which they are living.³⁷

Legal aid covers all the costs of the proceedings required by law. Those who are eligible for legal aid are exempted from paying costs including the standard charge for bringing a case, standard payments for official notification, certain fees (registry fees, judicial mortgage and land registry fees), and copyright. The State pays for other costs, such as legal fees, travel costs and expenses incurred by judges, officials, witnesses and experts, the cost of publishing any notice regarding a judge’s ruling, and the cost of official notification.³⁸ Standard payments for entry of a civil case in the cause list and other expenditure items that may arise are not required in proceedings concerning

³⁵ A juvenile court is established in every court of appeal and has jurisdiction over the whole territory of the district.

³⁶ European Judicial Network, ‘Legal aid - Italy’, http://ec.europa.eu/civiljustice/legal_aid/legal_aid_ita_en.htm, 2005, (accessed 6 February 2014).

³⁷ Ibid.

³⁸ Consolidated Text No. 2002/115, Section 131.

children. The rules make no provision for partial legal aid.³⁹

Recipients of legal aid may appoint a lawyer of their choice from the list of legal aid lawyers drawn up by the relevant bar association, as well as expert witnesses where provided by law. If the case is at the appeal stage, the lawyer will be chosen from the list drawn up by the relevant bar association. The list of legal aid lawyers comprises professionals who have applied to be put on it and have the qualifications necessary to represent clients.⁴⁰

The State has the right of reimbursement and, where it does not recover the money from the losing party, it may claim reimbursement from the recipient of legal aid if they win the case, settle the dispute and receive at least six times the cost of the expenses incurred, or if the case is discontinued or barred.⁴¹

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

The provision of pro bono legal services by Italian lawyers is not a common practice in Italy. Lawyers providing legal representation on a pro bono basis would usually do so through the State's legal aid system. Nevertheless, some large global and local law firms have recently started to provide pro bono legal services to indigent persons and NGOs. Contingency fee agreements are permitted.⁴²

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

According to the type of violation, the statute of limitations varies. In general, in civil cases the statute of limitations is 10 years. The limitation period for civil cases can be shorter depending on the civil wrong done, for example, a damages claim in tort is limited to five years.⁴³ In criminal cases, the statute of limitations varies greatly according to the type of crime, but generally, a victim has three months within which to bring a case. (See part V below for more information on statutes of limitations.)

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

In a civil action, there are two types of evidence: (i) written documents and (ii) oral declarations. Written documents can be represented by acts executed by a notary, acts executed by the parties and other types of written documents (e.g. telefax, emails, accounting documents and photocopies). Oral declarations can be given by the parties

³⁹ European Judicial Network, 'Legal aid - Italy'.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>, 2012, (accessed 6 February 2014), p. 139.

⁴³ Civil Code, Article 2947.

(e.g. confession or oath before the court) or by other individuals (e.g. testimony, affidavit).

All persons, irrespective of age, have the capacity to testify in criminal and civil proceedings.⁴⁴ However, during criminal proceedings a child under 14 years of age need not take an oath and the content of his or her testimony is not imputable.⁴⁵

Special procedures exist for dealing with evidence given by children. In civil proceedings involving child victims, the court can decide to use particular procedures for dealing with the victims in order to avoid further stress for the victims. For instance, the judge can decide to avoid cross-examination and directly ask questions to the victims.

In criminal proceedings involving child victims or witnesses, examination of a child is conducted by the presiding judge of the court on questions and cross-examination proposed by the parties, with the possible assistance of a relative of the child or an expert in child psychology.⁴⁶ If a party requests, or if the judge deems it necessary, examination of a child can be undertaken in a protected hearing. Similarly, during preliminary investigations, an interlocutory witness exam in the form of a protected hearing can be utilised to take the testimony of a child aged under 16 in order to avoid the child having to testify during the trial.⁴⁷ Protected hearings can take place at the child's home or an ad hoc location.⁴⁸ If the party or the counsel requests, the examination of the child victim is made by using a mirror glass together with an intercom.

Under the law on sexual violence (Law No. 66 of 1996) it is possible for the public prosecutor, or the person undergoing investigation, to ask that evidence of a child under 14 years be taken in the pre-trial phase and that such evidence be taken outside the court, using specialised facilities or the home of the child.⁴⁹

The press is prohibited from publishing details and photographs of child witnesses and children who are offended or damaged by the crime until they have reached the age of 18.⁵⁰

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

It is not possible to indicate a timeframe within which courts will make a decision. This mainly depends on the type of violation and the difficulty of the case, together with the type of evidence involved in the case. However, in many instances the European Court of Human Rights (ECtHR) has condemned Italy for the long delays in reaching decisions in general court proceedings. See part V below for more information on delays.

⁴⁴ Code of Criminal Procedure, Article 196(1); The decision of the Constitutional Court (No. 139 of 11 June 1975) declared unconstitutional the law which provided that children under the age of 14 could be heard in civil trials only when their testimony was made necessary by particular circumstances.

⁴⁵ *Initial report of Italy to the UN Committee on the Rights of the Child*, para. 93(1).

⁴⁶ Code of Criminal Procedure, Article 498(4).

⁴⁷ *Ibid.*, Article 392.

⁴⁸ *Ibid.*, Article 398.

⁴⁹ Law No. 66 of 1996 on sexual violence, Articles 13-14.

⁵⁰ Code of Criminal Procedure, Article 114(6).

G. Appeal. What are the possibilities for appealing a decision to a higher court?

All decisions of any “first instance” court can be appealed before the competent court of appeals.

Decisions in civil cases can be appealed to the Court of Appeal. In criminal cases: appeals against decisions of a Justice of the Peace can be made to a *Tribunale monocratico*; appeals against decisions by a Tribunale can be made to a Court of Appeal; and appeals against decisions by a *Corte d'Assise* can be made to a *Corte d'Assise d'Appello*. The potential appellant in a civil or criminal case must bring an appeal within 60 days of the judgment.⁵¹

Appeals in administrative cases may be made from an Administrative Regional Tribunal to the Council of State or the Council of Administrative Justice of the Region of Sicily (*Consiglio di giustizia amministrativa della Regione Sicilia*).⁵²

Decisions of courts of appeals can be appealed to the Supreme Court of Cassation (*Corte Suprema di Cassazione*) (i.e. the highest court in Italy) solely on matters of law, and not matters of fact.

Finally, as a last resort, a party can appeal their case to the ECtHR if local remedies have been exhausted.

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

As in other civil law systems, the Italian legal system makes no distinction between binding and persuasive precedent. In principle, case law is merely persuasive, so a negative decision would not have a long-term impact.

However, decisions of the Court of Cassation and Constitutional Court tend to be followed in practice. There is an unwritten rule that if an ordinary judge delivers a judgment based on a precedent of the Court of Cassation then they are exempted from providing detailed reasoning; on the contrary, if the judge does not follow a precedent of the Court of Cassation, their judgment must be well reasoned otherwise they risk disciplinary action. Similarly, although decisions of the Constitutional Court are not strictly binding on civil, criminal and administrative judges they are always scrupulously observed.⁵³

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

N/A.

V. **Additional factors**. Please list any other national laws, policies or practices you

⁵¹ Ibid., Article 593 ff.; Civil Procedural Code, Article 339e ff.

⁵² European Judicial Network, ‘Organisation of justice - Italy’, http://ec.europa.eu/civiljustice/org_justice/org_justice_ita_en.htm, 2006, (accessed 6 February 2014).

⁵³ G. Ferrari & A. Gambaro.

believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Two issues which are intertwined - delay and the statute of limitations - have plagued the Italian legal system. The statute of limitations in Italy operates in a way that the limitation period still runs while the case is being heard. Furthermore, the problem of the slow-moving nature of the Italian justice system means that, more likely than not, cases and trials will exceed the limitation period. The European Court of Justice, expressing its frustration, has referred to this as the "Italian Torpedo".⁵⁴ Italian courts suffer from a severe backlog due to the uncertain and inconclusive nature of the judgments and, as a result, the losing parties bringing appeals to the appellate courts. As of October 2012, there was a backlog of around 5.4 million civil cases.⁵⁵

Child claimants or their legal representatives must be aware of these delays and the strict rules of the statute of limitations, and accordingly must act swiftly once a breach has occurred or is suspected. However, not all cases that are brought will be heard so claimants must weigh what will benefit them in the long run.

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⁵⁴ In a conflict of laws case, where a forum has not been specified, the claimant will bring a claim in a jurisdiction governed by the Brussels Regulation to prevent the other party from bringing a claim in a jurisdiction that favours them. For this purpose, the Italian courts were preferred as they were infamous for delays and slowness. See, e.g., Berwin Leighton Paisner, 'West Tankers revisited: the "Italian Torpedo" torpedoed', <http://www.blplaw.com/know-how/expert-updates/dispute-resolution-west-tankers-revisited-the-italian-torpedo-torpedoed/>, 2011, (accessed 6 February 2014).

⁵⁵ Jams International, 'Mandatory mediation under threat in Italy', <http://www.jamsinternational.com/mediation/mandatory-mediation-under-threat-in-italy>, 2012, (accessed 6 February 2014).