



# CAMMINO DIRITTO

Rivista di informazione giuridica



## ARE UNEMPLOYED CHILDREN ENTITLED TO SUPPORT?

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*With a recent verdict, the Italian Cassation connected the obligation to support children to their missing and innocent achievement of economic independence.*

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When dealing with over 18 children in Book I Title IV, the Italian legislator states in **art. 155 quinquies of the Italian Civil Code** that: “*The judge, after examining the circumstances, can provide unemployed over 18 children with a periodic cheque. This cheque is deposited directly to them, unless the judge makes a different decision. As for over 18 children who are severely disabled according to article 3, paragraph 3 of the law n.104 of 5th February 1992, the same dispositions as those concerning under age children are applicable*”.

This provision came from an important reform introduced in 2006 that encompassed part of the jurisprudence and doctrine of those years. Consequently, it is now believed that **over 18 children also need to be included among those entitled to this cheque.**

**The criterion** adopted by the Supreme Court is **economic independence**: only this element influences the above-mentioned right.

The persistence of the obligation is determined by the child’s objective and subjective possibilities to become self-sufficient, thus considering their suitability, ability and job opportunities.

Nevertheless, **this does not mean that the Italian Cassation justifies or encourages children who do not want to work.** The cheque cannot be given *de iure*, i.e. just because you are a child and you are unemployed. The youngster has to get a job that is coherent with their educational route and social level.

The concept of *non-economic independence* is strictly connected to the idea that **over 18 children are not guilty** of not achieving it. However, **the abuse of this right is not allowed**, especially if the youngster is lazy and unjustifiably refuses job proposals.

The judges of Piazza Cavour made a further step in this case in the recent **sentence n.18076 of 20/8/2014**. Starting from the concept of *innocent economic independence*, they pointed out that **the parents must demonstrate that they did everything they could to help their child become self-sufficient.** However, the validity of the above-mentioned burden of proof “(...) *is proportional to the advancing age, up to the*

*point that the youngster's educational route is over and they have been in society for a long time. Indeed, the child's right can be justified only within the limits of an education project and an educational route, taking their skills, aspirations and talent into account."*

**In the case in which the subject's personality is formed, the parents' duty is perfected** and the persistence in the enjoyment of the right is over. The risk is to demotivate the youngsters who do not want to get a job because they receive a periodic cheque.

The sentence in question highlights not only the relationship between re-education purpose, support and innocent non-economic independence, but it also concentrates on the necessity to avoid the persistence of this right because it can be a social safety net, considering the increase of youth unemployment.