

## 2 - Reporting a crime and my rights during the investigation or trial

### How do I report a crime?

- A report is filed when an individual who has knowledge of a publicly actionable offence informs the public prosecution service or a CID officer about it. Reporting a crime is optional, but it becomes mandatory in several cases expressly provided for by law. The report contains the essential details of the incident, and indicates the day upon which you became aware of the offence and the sources of evidence already noted. In addition, it contains, where possible, the personal details, residence and anything else that may help to identify the person suspected of committing the crime, as well as your personal details as the offended party and the details of anyone else who may be able to provide relevant information to help establish what happened. If no useful details are given which might help to identify the person suspected of the crime, this does not prevent criminal proceedings from being launched, as you can file a report against persons unknown, which must be submitted to the relevant prosecutor's office by the police authorities, along with details of any investigative measures carried out in order to identify the perpetrators of the crime.
- A complaint is a statement by means of which an individual who has been a victim of crime (or their legal representative) expresses a wish that the offender be prosecuted. It relates to non-publicly actionable offences. The statement must describe the offence committed and must express the clear wish of the complainant to proceed with the allegation and punish the guilty party. You may withdraw a previously filed complaint, except in cases of sexual assault or sexual acts with a minor. In order for the complaint to be dropped, the withdrawal must be accepted by the subject of the complaint who, if innocent, may instead wish to demonstrate by means of a trial that they had nothing to do with the crime.
- A petition is filed to request the intervention of law enforcement authorities in disagreements between private individuals, and is submitted by one or both of the parties involved. Following a request for official intervention, the law enforcement officer invites the parties to a meeting in order to attempt conciliation and draw up a report. If it is established that a crime has been committed, the law enforcement officer must inform the judicial authorities, if it is a publicly actionable offence; if it is a crime actionable by means of a complaint, he or she may, upon request, undertake a preliminary settlement of the dispute, which does not prejudice your subsequent right to bring a complaint.

Reports, complaints and petitions must be filed at the offices of a branch of the law enforcement authorities (provincial police headquarters, local police stations and offices of the military police (*Carabinieri*)). A report or a petition may also be filed with the public prosecutor.

### How do I find out what's happening with the case?

After you have filed a report, you will be provided with information relating to: the authorities you can contact if you wish to obtain information about the case, the role that you will play in the investigation and trial, your right to be made aware of the date and location of the trial and of the charge, and, if you join proceedings as a civil party, your right to receive notification of the judgment, including as a summary. In addition, you may receive updates about the status of proceedings and of entries in the Official Registry of Reported Offences; you will be advised of any request to close the case, how to challenge any violation of your rights; and you can settle the case by withdrawing the complaint, where possible, or through mediation (Article 90-bis of the Code of Criminal Procedure (*Codice di procedura penale* or c.p.p.)).

### Am I entitled to legal aid (during the investigation or trial)? Under what

## conditions?

Following first contact with the prosecuting authorities, you will be provided, in a language you can understand, with information relating to your entitlement to legal advice and legal aid, paid for by the Italian State (Article 90-bis). You may submit an application for State-funded legal aid pursuant to the regulations provided in the law on aid for the underprivileged (Article 98 c.p.p.). You may also have access to State-funded legal aid if your income does not exceed the limit provided for by law. In order to be eligible for State-funded legal aid, you will need to submit the relevant application to the court of first instance, in the period immediately following the filing of the report. Upon completion of the first stage of proceedings which the defence counsel has the right to attend, and, in any case, before the invitation to come in for questioning, or, at the latest, at the same time as notification that preliminary investigations have been concluded, the public prosecution service must notify the individual under investigation in writing that he or she has been appointed a defence counsel by the court, or any subsequent acts will be null and void (Article 369-bis c.p.p.).

This notification must contain:

- a) the information that it is obligatory to have professional counsel for the defence in criminal proceedings, with information about the rights conferred by law upon an individual under investigation;
- b) the name of the court-appointed defence counsel, his or her address and telephone number;
- c) information about the accused's right to nominate his or her own defence lawyer, with the advice that, if he or she does not do so, he or she will be represented during the investigation by the court-appointed counsel;
- d) the indication that he or she will have to pay their court-appointed defence counsel, if he or she does not meet the requirements to obtain State-funded legal aid, and the warning that should he or she be declared insolvent, enforcement proceedings will be commenced;
- d-bis) information relating to the right to an interpreter and to translation of important documents;
- e) information relating to requirements to be eligible for State-funded legal aid.

Free legal aid is an institution based on the right to defence enshrined in Article 24 of the Italian Constitution, on the basis of which anyone has the right to assistance at any stage and at any level of the justice system, and allows persons in financial difficulties not only to obtain, at the expense of the State, the assistance of a lawyer and of specialists, including technical consultants, but also not to have to pay court costs. Free legal aid is available for criminal cases and civil cases connected to criminal cases, for supplementary actions like criminal enforcement, security, prevention and surveillance proceedings, and lastly for civil cases originating from criminal proceedings.

Eligibility to access free legal aid is not available to Italian citizens alone, but also to foreign nationals, even if when they are subject to administrative expulsion proceedings, are not resident in Italy or are stateless persons living in Italy.

All parties to the proceedings may apply for free legal aid, but if you are a victim of certain sexual offences the income limits stipulated by law will not apply.

The State also protects minors, who can obtain free legal aid, as can persons who are the subject of preliminary investigations if they are arrested, detained or subject to pre-trial detention measures.

In order to be eligible for free legal aid, your income must not be greater than the maximum fixed in law, equivalent to EUR 11 369.24, taking account of an increase for every other person living with you of EUR 1 032.90.

## Can I claim expenses (for taking part in the investigation/trial)? Under what conditions?

Free legal aid, an institution based on the right to defence enshrined in Article 24 of the Italian Constitution, allows anyone who meets the requirements (relating to circumstances of financial hardship) to assistance at any stage and at any level of the justice system,, from a lawyer and from specialists, including technical consultants, at the

expense of the State; it also allows for exemption from paying court costs.

## Can I appeal if my case is closed before going to court?

If you file opposition to a request to close the case, you are asking for preliminary investigations to continue. You must indicate the subject of the further investigation and corresponding items of evidence, or the opposition will be declared inadmissible. If your opposition is inadmissible and the notice of the offence is unfounded, the judge will order by reasoned decree that the case be closed, and return the documents to the public prosecution service. If the request is not accepted, the judge will fix a date for a hearing in chambers, informing the public prosecution service thereof, for you and for the person under investigation. The judge will also inform the Prosecutor General at the Court of Appeal (*Corte di Appello*) that the hearing has been scheduled. Following the hearing, the judge, if he or she considers further investigations to be necessary, will indicate this by means of an order to the public prosecution service, setting a non-negotiable deadline for these investigations to be completed. If the judge does not accept the request for the case to be closed, he or she will order the public prosecution service to formulate a charge within ten days. Within two days of the charge being issued, the judge will issue a decree to schedule the preliminary hearing.

If you are a victim of a violent crime against the person, in addition, you will always have the right to be informed if there is a request for the case to be closed, even if you do not explicitly request to be told, and you will have 20 days from receiving this notification to view the documents and to present a reasoned application for preliminary investigations to be continued (Article 408(3-bis) c.p.p.).

## Can I be involved in the trial?

As the victim of the crime, you may nominate a counsel to exercise the rights conferred upon you. To make sure that you receive the communications to which you are entitled by law, and to exercise specific rights, you must declare and indicate an address for service. You must also communicate any change in this address during the course of the criminal proceedings. If you have nominated counsel, you will not need to provide this information, as all notifications will be sent to him or her.

You have the right to file pleadings and to indicate items of evidence, both during the investigation stage and during the trial (Article 90-bis c.p.p.). You can also check the entries in the Official Registry of Reported Offences (Article 335 c.p.p.). You must be informed when expert assessments, which cannot be repeated, are complete (Article 360 c.p.p.). You also may make a request to the public prosecution service for collection of evidence in the pre-trial hearing. You may ask to be notified of any request to defer the investigations or to close the case, both immediately when making the report or subsequently. You must specifically ask to be informed of a request to defer the investigations (Article 406 c.p.p.) and of a request to close the case (Article 408 c.p.p.). When a trial is held, you have the right to be informed of the place, date and time of the first hearing; for subsequent hearings, you will not be notified and you must obtain the adjournment dates yourself from the court of first instance. You are not obliged to attend the hearings, other than when you give your evidence. Once the investigations have been concluded, you have the right to see all the documents relating to the case and to make copies thereof. However, while investigations are still ongoing you may not do this, as a rule, although the public prosecution service can authorise it if there are specific reasons for interest.

When a criminal trial is held and you have been affected by the crime committed, you can ask for compensation and to participate in the trial, by joining proceedings as a civil party.

## What is my official role in the justice system? For example, am I or can I choose to be a: victim, witness, civil party or private prosecutor?

The victim, as the person affected by the crime, has all of the rights indicated above. In addition, you may be heard as a witness in the trial and, if you have the right to compensation for damage caused by the crime, you may bring a civil action in the criminal trial by joining the proceedings as a civil party.

## What are my rights and obligations in this role?

Without prejudice to what is set out above in relation to your rights and interests as the offended party, if you also act as a witness, the following rules apply:

As a witness, you must appear before the judge and follow the instructions given to you by him or her regarding procedural requirements, and respond to questions addressed to you truthfully. You are not obliged to reveal anything that may lead to a criminal prosecution against you. Should it happen that on the day of the hearing, a problem arises which makes it impossible for you to attend, you must make this known in good time, indicating the reason for your absence. In this case, if the judge deems your absence to be justified, he or she will issue a further summons for a subsequent hearing. If you are summonsed several times and do not appear, without giving a legitimate reason, you may be given a compulsory escort and you might also be obliged to pay a fine to the Fines Office (*cassa delle ammende*) and the costs incurred by your failing to appear, within the meaning of Article 133 c.p.p. You are obliged to respond to questions addressed to you truthfully. Article 372 c.p.p. makes provisions to punish witnesses who refuse to respond, make false statements or do not state what they know. If you are unwilling or uncooperative as a witness, you may be punished by a prison sentence. A witness cannot be detained during a hearing. If you withdraw a false statement, or confirm the truth, before the judgment is pronounced, you cannot be charged with a crime. No punishment will be incurred if you give false testimony in order to save yourself or a close relative from a criminal conviction (Article 384 c.p.p.).

## Can I make a statement during the trial or give evidence? Under what conditions?

You, as the victim of the crime, may also appear as a witness. Your statements may be used as evidence to convict the accused, if when subject to scrutiny they have both objective and subjective credibility. The judge may freely evaluate your testimony and it may even be your evidence alone which forms the basis for the conviction of the accused. You must tell the truth, although you are not obliged to incriminate yourself (the right to silence). Close relatives of the accused are not obliged to appear as witnesses, unless they themselves file the report or complaint, or in cases where they or a close relative are the victim of the crime that is the subject of proceedings. You can also refuse to answer questions that may reveal a professional secret. If you make statements during the preliminary investigations, you may be entitled to various protective measures.

## What information will I receive during the trial?

(See above)

## Will I be able to access court files?

The public prosecution service will immediately enter, in the appropriate register held by its office, notice of any crime of which it has been made aware, or which it has discovered of its own initiative, and at the same time, or as soon as it is available, the name of the person who is suspected of committing the crime. If, in the course of the preliminary investigations, the legal characterisation of the incident changes, or details prove to be different, the public prosecution service will update the entries. The entries will be communicated to the person accused of the crime, to you as the victim and to the respective counsels, if so requested. When a request is made for information regarding entries in the Official Registry of Reported Offences, the secretariat of the Public Prosecutor will provide the information requested, if such entries have been made and there is nothing to prevent a response. Otherwise, it will declare that there are no entries about which information may be provided. If there are specific requirements relevant to the investigations, the public prosecution service, upon deciding whether to grant the request, may order, by virtue of a reasoned decree, that the entries remain secret for a period of no longer than three months, and which cannot be extended (Article 335 c.p.p.).

The public prosecution service, if it is not going to request that proceedings be closed, when the case concerns abuse of family members and partners or stalking, will also notify your legal representative, or, if you do not have one, you yourself, that the preliminary investigations have been concluded (Article 415-bis c.p.p.).

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