

4 - Compensation

What is the process for claiming damages from the offender? (e.g. court case, civil claim, adhesion procedure)

The commission of a crime and a subsequent conviction means that the offended party can claim damages. Italian law provides two ways for you to obtain compensation for the damage you have suffered:

- You can join the criminal proceedings against the offender as a civil party.
- You can bring an independent civil action.

This is your choice, as the legislation leaves the two proceedings separate: the criminal proceedings and the civil proceedings.

Only after a request that the case be committed for trial, or committal for trial (at a hearing), may you, assisted by your counsel, join a civil action and thus become an effective party to the proceedings, with full rights of representation. When sentencing, the criminal court will award you a sum, the so-called interim award, which is immediately enforceable, referring the decision about the total and final amount of compensation to a civil court, to be fixed only after the criminal judgment has become *res judicata*.

As an alternative to joining proceedings as a civil party, you can bring an independent civil action to request compensation for damage suffered as a result of the offender's behaviour.

The court ordered the offender to pay me damages/compensation. How do I make sure the offender pays?

When the court orders the offender to pay compensation for injuries or damages caused to a victim who has joined proceedings as a civil party, it can do one of three things: settle the damages, make a general order for compensation or order payment of an interim sum.

The best thing for the victim is if the judgment orders final settlement of the damages: in that case, in fact, it is possible to inform the offender of the judgment and the order for payment (*atto di precetto* - a payment notice which must be issued prior to starting enforcement proceedings), thus ordering the payment of the amount owed, and taking the first step necessary for issuing enforcement measures in the event of persistent failure of the offender to pay (in which case it is always advisable to conduct preliminary inquiries about the assets that might be claimed).

Unless the award of compensation was stated to be expressly provisionally enforceable, enforcement is conditional upon the judgment not being overturned, that is to say upon no appeal being filed within the deadline.

The order for payment, therefore, can be communicated along with the judgment, including in cases where the latter orders the payment of an interim award, which, moreover, is always declared to be immediately enforceable. However, this will not always be satisfactory in the eyes of the victim. Therefore, if you consider it insufficient, you must bring an independent civil action, by means of which any residual damage can be ascertained and a new, different penalty imposed upon the offender.

Civil proceedings are always necessary in the third possible scenario, where the criminal court merely issues a general order for the offender to pay compensation, without fixing an amount, due to there being a lack of sufficient evidence in this regard.

If the offender does not pay, can the state pay me an advance? Under what conditions?

The State, on the basis of Directive 2004/80/EC, implemented in Italy by means of the provisions stated above, must guarantee to citizens and non-nationals who are victims of violent intentional crime (murder, GBH with intent, sexual assault), committed on Italian territory, fair and appropriate compensation, every time that the offender is not identified, or is not brought to justice, or, in any case, does not have the financial resources to compensate victims for the damage he or she has caused them, or, if the victim has died, to their families.

Am I entitled to compensation from the State?

(See above)

Am I entitled to compensation if the offender is not convicted?

If the defendant is found to be innocent in criminal proceedings, this does not prevent you from bringing an action for compensation in the civil courts, unless you renounced this right by joining the criminal proceedings as a civil party.

Am I entitled to an emergency payment while I wait for the decision on my compensation claim?

If you join the criminal proceedings as a civil party to request repayment and compensation for damage, upon issuing the judgment the court will also rule on the civil aspects of the case, pursuant to Article 533 c.p.p. In cases in which there is evidence that damage was suffered as a result of the crime (*an debeatur*) but not how much (*quantum debeatur*), the court will issue a generic ruling in relation to civil responsibility and remit the parties to a civil court for the amount to be settled (Article 539 c.p.p.). A civil party, however, can ask the criminal court for an interim award, within the limits of the damage already substantiated by evidence. The provisional ruling, more precisely, will order the offender and his or her civil representative to pay a sum by way of compensation for damages in advance of the definitive calculation thereof, and this is immediately enforceable. It is an instrument which, at your specific request, provides justification for ordering the offender to pay an interim sum, when the court considers that there is already concrete evidence of liability, limited to the amount in respect of which the interim sum is awarded; in fact, even in criminal proceedings, 'it is not necessary, for the purposes of calculating the interim sum, to provide evidence of the amount of damage itself, but it is sufficient that it is certain that such damage occurred, up to the sum awarded (Court of Cassation criminal division, No 12634/2001).

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