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# Claiming damages from the offender

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## How can I claim damages or other means of redress/satisfaction from an offender in a trial (criminal proceedings), and who should I address this claim to?

The offender is obliged to make good the damage caused to the victim. Article 185 of the Criminal Code states that for all offences restitution must be made, in accordance with the rules of civil law. Wherever a criminal offence has caused material or non-material injury, compensation must be paid by the offender and any other person who, pursuant to civil law, is liable for the offender's actions. In civil law, damage caused by a criminal offence is one of the circumstances in which non-material injury may have to be compensated for (Article 2059 of the Civil Code).

The victim has a choice between two different avenues for obtaining reparation of the injury they have suffered.

They may join the criminal proceedings as a civil party, which means that they bring their civil action as part of the criminal proceedings (*costituzione di parte civile*): at the end of the criminal proceedings, the criminal court will assess the injury and award damages, or merely make a finding that there is a right to damages and refer the parties to the civil courts in order to determine the amount owed. Article 74 of the Code of Criminal Procedure provides that during the criminal proceedings a civil action for damages in accordance with Article 185 of the Criminal Code may be brought by anyone who has suffered injury as a result of the offence, or by their heirs, against the defendant and any person liable in civil law.

On the other hand, the victim may also bring civil proceedings direct, by filing a claim for damages in the ordinary civil courts.

The relationships between civil actions and criminal actions are governed by Article 75 of the Code of Criminal Procedure. A civil action brought in a civil court may be transferred to the criminal proceedings at any time until the civil court gives judgment on the substance, even if that judgment is still open to appeal. In that case the civil action is discontinued, and the criminal court will also rule on the costs of the civil proceedings. A civil action will continue in the civil courts if it is not transferred to the criminal proceedings, or if it was brought at a stage when it was no longer possible to join a civil action to the criminal proceedings. If a civil action against a party who is a defendant in criminal proceedings is brought in the civil courts after a civil action has been joined to the criminal proceedings, or after a criminal judgment at first instance, the civil proceedings are suspended pending a final criminal judgment, save for the exceptions provided for by law.

## At which point in the criminal proceedings should I present a claim?

A civil action may be joined to the criminal proceedings up to the time of the preliminary hearing, or even thereafter, until the completion of the preliminary steps that have to be taken under Article 484 of the Code of Criminal Procedure before the beginning of the trial proper. Once that stage is reached a civil action can no longer be joined to the criminal proceedings. If a civil party joins the criminal proceedings after the expiry of the deadline for the summoning of witnesses, experts and advisers laid down in Article 468(1) of the Code of Criminal Procedure, the civil party cannot exercise the right to submit lists of witnesses, experts or technical

advisers. Once the civil party has joined the civil proceedings, they are a party to the trial at first instance and any appeals, unless they are excluded or voluntarily withdraw. A civil action joined to criminal proceedings is extinguished in two cases: 1) an application for a civil party to be excluded may be submitted by the public prosecutor, the defendant or a party liable under civil law (Article 80 of the Code of Criminal Procedure), or the court may of its own motion make an order excluding a civil party at any time until the trial at first instance opens (Article 81 of the Code of Criminal Procedure); 2) the civil action may be expressly withdrawn, at any stage of the proceedings, by way of a verbal or written statement made by the civil party or their special representative (*procuratore speciale*); the civil action is considered to have been tacitly withdrawn if no pleadings are submitted, or if an action is brought in the civil courts (Article 82 of the Code of Criminal Procedure).

## What can I ask for in the claim and how should I present it (indicate a total amount and/or specify the individual losses, lost profits and interests)?

A civil action joined to the criminal proceedings may seek compensation for any injury, material or non-material, medical expenses, legal assistance, technical advice and other expenses incurred and documented, provided that they arise out of the offence committed.

## Is there a specific form for such claims?

There are no official forms in Italian criminal proceedings, but the following requirements must be fulfilled.

The civil party must have capacity to sue (*capacità processuale*). The declaration that the party wishes to join the criminal proceedings as a civil party must be filed with the registry of the relevant court or submitted at the hearing; in order to be admissible it must contain: a) particulars of the natural person or the name of the association or body asking to join the proceedings as a civil party and particulars of their legal representative; b) particulars of the defendant against whom the civil action is being brought, or other personal information which serves to identify them; c) the full name of the lawyer representing the civil party and details of their authorisation to act; d) a statement of grounds for the claim; e) the lawyer's signature. If it is submitted otherwise than at a hearing, the declaration must be notified by the civil party to the other parties, and takes effect with respect to each party from the day on which the notification is served. If the lawyer's authorisation to act is not affixed at the foot or in the margin of the declaration that the civil party wishes to join the proceedings, and is instead conferred in one of the other forms provided for by Article 100(1) and (2) of the Code of Criminal Procedure, it must be filed with the registry or submitted at the hearing together with the declaration.

## What evidence do I need to present to support my claim?

In criminal proceedings, the civil action is ancillary to the proceedings to determine the defendant's innocence or guilt. It is the public prosecutor's office that has the task of proving that the defendant is guilty. The civil party may however play a part in the evidentiary process, especially with regard to evidence of the type of injury suffered, the magnitude of the injury, etc. In civil proceedings, on the other hand, it is the victim who generally bears the burden of proof when it comes to providing evidence (e.g. medical certificates) showing the magnitude of the injury suffered, though the burden of proof may be discharged by showing that there is a legal presumption in the victim's favour.

## Can I get legal aid before and/or during the proceedings? Can I get it if I'm not living in the country where the proceedings take place?

State-funded legal aid is available to persons whose annual income does not exceed a certain threshold: it is granted provided that the proceedings take place in Italy, and is open to both Italian and non-Italian nationals. This issue is governed by Presidential Decree No 115/2002.

## When would the criminal court dismiss or refuse to adjudicate on my claim

## against the offender?

In criminal proceedings, the civil claim will not be granted if the defendant is acquitted. When during the preliminary investigations a request is made for the application of an agreed penalty (*richiesta di applicazione di pena*), an application to join the criminal proceedings as a civil party cannot be accepted at the hearing that follows. Nor can such an application to join the proceedings be made at the hearing following a request for the application of an agreed penalty in proceedings on an objection to a sentence imposed without seeking to hear the defendant (*opposizione a decreto penale*) or on an objection to an order for immediate judgment (*opposizione a decreto di giudizio immediato*). The law also expressly precludes joining the criminal proceedings as a civil party in certain other cases, such as trials of minors.

## Can I appeal against such a decision or seek other means of redress/satisfaction?

At the end of the trial, following the judgment at first instance or on appeal, the civil party may take the view that the final decision does not properly address the injury they have suffered, and if so the civil party may challenge the judgment – once again through their lawyer – but only in respect of the sections or provisions that concern the civil claim for damages. A subsequent judgment may then vary the judgment at first instance with respect to the civil aspects (and thus with respect to damages). Such a judgment can reverse the detrimental effects of the judgment with regard to the reparation of injury, but has no impact on the findings concerning the criminal liability of the defendant: a defendant who was found not guilty for purposes of the criminal law continues to be not guilty even after the judgment has been varied in the civil party's favour. Thus the decision of the criminal court regarding the criminal liability of the defendant stands intact if a judgment acquitting the defendant is contested only by the civil party. There can therefore be an objective and tangible conflict between the findings of a judgment at first instance that acquits the defendant for purposes of criminal law and the findings of a judgment on appeal, following a challenge lodged by the civil party, that considers the same facts as a basis for a ruling on the reparation of injury. It will be seen that this is an extremely delicate and technical matter.

## If I am awarded damages by the court, how do I ensure the judgment is enforced against the offender and what help can I get to ensure this?

At the request of the civil party, and provided there are proper grounds, the court will declare its order to make restitution and compensate for injury to be provisionally enforceable. An order to make a provisional first payment (*provvisoriale*) is always enforceable immediately. Once the judgment becomes enforceable, the party can enforce it in accordance with the ordinary rules of civil procedure.

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