



(inglese)

PUBLIC PROSECUTOR 'S OFFICE
at the Court of MODENA

Art. 90 *bis* c.c.p provides for the following rights and faculties for the

VICTIMS OF CRIME

A) Pursuant to art. 101 of the Code of Criminal Procedure the victims of crime for the exercise of their rights and faculties conferred by law, may appoint a counsel of their choice as follows:

- a) by filing a declaration with the prosecuting authority;
- b) by delivering a declaration to the prosecuting authority through their lawyer, or submitted by registered mail;

The counsel has the right to make the investigations referred to in Articles 391 bis and following of the Code of Criminal Procedure and, pursuant to art. 33 impl. prov. of the Code of Criminal Procedure, "*the domicile of the victim of the crime who has appointed a defence lawyer shall be in the office of the lattee*".

The victim may file a report or accusation (containing the essential elements of the acts that wishes to report) in accordance with the procedures referred to in Article 337 of the Code of Criminal Procedure, orally or in writing, with the following authorities: Carabinieri station, office of the national police, office of the financial police or the local police station, the Prosecutor's office, any other office of judicial police, and a consular official abroad.

The report may be filed personally or by special attorney, and if submitted in writing, must be signed by the complainant or by a special attorney; in this case, the authority to act must be issued by an authentic instrument or private document, which should indicate the purpose for which was conferred and the acts to which it relates and must be attached to the report;

The victim of the crime is informed that for certain offences specifically provided by law, prosecution can be initiated only following a report made by the victim, namely *if there is the express request of punishment of the author of the reported act*.

Minors aged 14 or over can file accusations personally.

Proceedings shall be initiated upon a report by the victim for the following offences: intentional injuries (with the exception of the aggravating circumstances provided by law), stalking and sexual violence.

The deadline for filing an accusation (except express or tacit renunciation) is generally three months from the date when the fact was made known, and the accusation may be withdrawn before the conviction of the person that has been held liable for the criminal offence.

For the following crimes the deadline for filing an accusation is six months:

- a) sexual violence (except in cases where the crime is aggravated or committed against a person aged under 18), and the withdrawal of the accusation is not allowed;
- b) stalking (unless this crime is committed against minors or disabled persons, or if it is related to another crime which may be prosecuted ex officio) and withdrawal is permitted only "in a procedural form";

However, the accusation is irrevocable if stalking is committed by serious "repeated threats" or by a person with weapons or under false appearances or by more persons together or by anonymous writings, or symbolically, or using intimidating force arising from existing or supposed secret associations, (art. 612 p. 2 and 339 c.c.).

The right to file an accusation may be waived expressly or implicitly; 14 year-old minors may file an accusation even if a parent or guardian waived.

The victim during the investigation and trial, may exercise the rights expressly provided by law (art. 90 of the Code of Criminal Procedure) at any stage of the procedure and at any tier of jurisdiction, may submit pleadings and indicate the evidence (except for proceedings before the Supreme Court); has the right to be informed of the date and place of the trial and the indictment and, if the victim is a civil party, is entitled to receive notification of the judgment, even if partial, and has the right to attend the hearings;

B) The victim has also the right to receive a communication on the progress of the procedure and registrations (as to the classification of the registered crime and the person to whom the offence is attributed as suspect) in accordance with Article 335, paragraphs 1 and 2 of the code of criminal procedure by submitting a specific request, personally or through the lawyer appointed at the competent Public Prosecutor's Office; Without prejudice to the investigative secrecy, six months after the lodging date of the report or the accusation, the victim of crime may ask to be informed about the state of the criminal proceedings by the authority responsible for that criminal proceedings;

C) If the crime was committed with "violence against the person" the Public Prosecutor will inform the victim of the cessation of the proceedings. In that case, within 30 days after notification, the victim may inspect the records and file an opposition by means of a reasoned request for continuing the preliminary investigations;

In all other cases, the victim will be informed of the request for cessation of the proceedings, provided that has expressly stated in the accusation, or later, that she/he wanted to be informed of any request for cessation, and the date limit for filing an objection is 20 days.

D) The victim has the right to seek legal advice and legal aid in accordance with current provisions, and in particular: :

"People with an income not exceeding € 11,369.24 (limit in force in 2014 and adjusted every two years), registered in their latest income tax statement, are eligible for legal aid. Except as provided in art. 92 (the income limits are increased by an amount of € 1,032.91 for each family member living with the person concerned) if the victim lives with her/his partner or family, all income earned by each family member in the same period are considered, including the applicant.

For the purposes of the calculation of the revenue limits, also the revenues free of personal income tax (IRPEF), or before deductions as tax or substitute tax, are considered.

The personal income is considered when personality rights are the subject matter of the proceedings in which the applicant's interests are in conflict with those of the other mem-

bers of the family”.

The following people are admitted to legal aid as an exception to the above mentioned income limits:-

"1) the victim of the offences referred to in articles: a) 572 (domestic abuse); b) 583 bis (genital mutilation); c) 612 bis (stalking); d) 609-bis (sexual violence); e) 609-ter (sexual activity with a child); f) 609-octies (gang rape);

2) the minor who is victim of the offences referred to in Articles: a) 600 (reducing or maintaining to slavery); b) 600-bis (child prostitution); c) 600-ter (child pornography); d) 600-quinquies (tourist activities aimed at exploiting child prostitution); e) 601 (trafficking in persons); f) 602 (purchase and sale of slaves); g) 609-quinquies (corruption of minors); h) 609-undecies (the solicitation of children).

The application for legal aid at state expense, under penalty of inadmissibility, must be signed and certified by a lawyer or according to the procedure provided for in *DPR n.445 / 2000*;

The application on ordinary paper, under penalty of inadmissibility, must contain what is expressly indicated in art. 79 of DPR n.15 / 2002;

E) If the victim does not know the Italian language may exercise the right to translation of documents of the proceedings as follows:

- if the victim wishes or must make a statement in a foreign language, also in writing, a translator is designated and the statement is translated;
- if the victim attends the hearing will be assisted by an interpreter at her/his express request;
- the victim has right to free translation of documents, or parts thereof, containing useful information on the exercise of her/his rights;
- if the victim files a report or an accusation with the known Public Prosecutor's office. In the same cases has the right to obtain, upon request, the translation in a language she/he knows of the certificate of receipt of the filed report or accusation.

F) The following measures are provided to protect the victim of certain crimes.

In particular, if the author of the reported facts is a close relative or partner, the victim may request, for his/her protection, the *"removal of the perpetrator of the crime from the family home"* (art. 282 bis c.c.p.) with the *prohibition on approaching the places where the victim normally spends time* (art. 282 ter c.c.p.)

The victim has the right to receive, pursuant to art. 282 quater, paragraph 1 of the Code of Criminal Procedure, a communication on the implementation of the pre-trial supervision measure against the author of the crime, such as "the removal of the perpetrator of the crime from the family home" and "the prohibition on approaching the places where the victim and her/his close relatives normally spend time" and may indicate the need of not mentioning in procedural documents made known to the suspect, the place where the victim usually lives.

In the proceedings against the author of the reported facts, and in the case of crimes committed with "the use of physical violence" (except in cases where there is a real danger of harm to the perpetrator) the victim, upon application, has the right to receive immediate notice of the following measures:

1. "escape" of the person who has been remanded in custody /or is serving a final custodial sentence;

2. "release", after the sentence has been served;
3. cessation of custodial measure (*RE MS* and *Casa di cura e di custodia*)

The foreign person affected by pimping or a crime for which arrest is mandatory in case of flagrante delicto (art. 380 c.c.p.) and is in situation of violence or serious exploitation, may apply for a "residence permit for reasons of welfare benefits", under the conditions defined in art. 18a L. D. 286/1998;

If the victim declares to stay or reside in Italy and intends to reside or stay in another State of the European Community, in proceedings in which has taken on the role of "*protected person*", and if the pre-trial supervision measures of "removal of the perpetrator of the crime from the family home" (art. 282 bis of the code of criminal procedure) or "the prohibition on approaching the places where the victim normally spends time" (art. 282 *ter* c.c.p.) have been ordered against the perpetrator, may ask the judge who adopted these measures to issue a "European protection order".

The application may also be submitted by the legal representative of the protected person. The application must state, under penalty of inadmissibility, the place where the protected person has taken or intends to take her/his residence, duration and reasons for the stay.

G) If the victim resides in a EU Member State other than that in which the crime was committed, the Public Prosecutor will forward the reports and accusations to the General Prosecutor at the Court of Appeal to forward them to the "competent judicial authorities."

In addition, if the conditions are met, may request the issuance of the "European protection order" as stated in the preceding paragraph;

H) In case of violation of the victim's rights, he/she may file pleadings and reports with the authority concerned, or the judicial police office, stating the facts occurred in violation of his/her rights;

I) The victim may request information about the proceedings in which she/he appears as victim, even through counsel of his/her own choice, by applying to the competent offices of the Public Prosecutor, in the phase of preliminary investigations, and later, the competent offices of the Court by filing requests with the registry of the Court;

L) Victims who should make statements to the Prosecutor, or by delegation, to the judicial police, who do not reside in the place where they were summoned, are entitled to reimbursement of travel expenses, the price of the return ticket for second class on regular services, or the fare of economy class, if previously authorized by the judicial authority. If these services do not exist, reimbursement of travel expenses applies to the nearest place where there is a regular service.

Taxi costs are reimbursed only if expressly and previously authorized.

They are also entitled to reimbursement of compensation of € 0.72 for each day used for the trip, and € 1.29 for each day of stay in the place of examination. The latter is due only if witnesses are forced to stay outside their residence at least a full day, in addition to the day of departure and return.

Similar provisions are provided for victims who are summoned to appear as witnesses before the judge.

The application for authorization and settlement of the payments above, duly documented (by filing the original of the ticket), must be submitted to the judicial authority which ordered the summons.

M) It is possible to claim compensation for damage resulting from the offence since art. 185 of the CC provides that "any criminal offence requires restitution according to the civil rules of law" and that "any criminal offence which causes material or non-material harm obliges the wrongdoer, as well as any person who is responsible for the conduct of the wrongdoer according to civil law, to compensate for that harm "

Compensation may be sought by the civil party in the criminal trial, pursuing a civil action before the competent Court or Peace Judge.

These two initiatives must be activated by appointment of a lawyer.

N) If a person is the victim of a crime whose action can be initiated only upon a report by the victim and has validly filed an accusation in good time, the case can be defined with the withdrawal of the accusation under the procedures and conditions referred to in article 152 and following of the Criminal Code, before conviction against the author of the crime, unless the law provides otherwise;

In any case, to produce the discharging effect, withdrawal of the accusation must be expressly or tacitly accepted by the defendant;

However, regarding the crime of sexual violence the accusation is irrevocable, also for stalking, if was committed by serious "repeated threats" or by a person with weapons or under false appearances or by more persons together or by anonymous writings, or symbolically, or using intimidating force arising from existing or supposed secret associations (art. 612 p. 2 and 339 c.c.);

If it is an offence whose action can be initiated only upon a report and falls within the competence of the Peace judge, the proceedings can be defined by encouraging, on the initiative of the judge, conciliation between the parties and consequently the withdrawal of the accusation, also through a mediation activity of centers and public institutions present on the territory;

O) In proceedings in which the accused person requests the stay of proceedings with socio-judicial probation, leading to extinction of the offence, in case of successful socio-judicial probation, the victim has right to intervene in making submissions;

Likewise has the right to intervene in making submissions if, in cases where the exclusion of punishment for crimes of minor nature applies, the Public Prosecutor requested to dose the case to this effect.

P) In the District of the competence of the Prosecutor of Modena there are health facilities, group-homes, anti-violence centers and women's refuges, a list of which and contact information can be found by accessing institutional sites;

In relation the foregoing the persons concerned are informed of the following:

- 1) to obtain information, the victims of violence and stalking can call the telephone number (h 24) **1522** of the Department for equal opportunities;
- 2) on the website www.pariopportunita.gov.it/ of the department there is also a list of other useful phone numbers: "anti-discrimination", "anti-trafficking" and against the "female genital mutilation";

3) for detailed information on health facilities may access the website of the Ministry of Health: www.salute.gov.it/.

Finally, for additional information, the victims can access the website of the Public Prosecutor's Office of Modena in which there is a section dedicated to useful information for the victims of crime.