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**JUSTICE FOR WOMEN – Towards a more effective rights protection and access to judicial procedures for victims of crimes**

**JOINT LEGAL EXPERTS MEETING**

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## Introduction

Determining the amount of compensation is a challenging issue.

Effective access to an equitable compensation can be a significant factor in the recovery process for survivors of crimes; obtaining fair and equitable compensation can contribute to a sense of justice and can play a significant role in the survivor's psychological recovery.

## Right to compensation

In Italy, the right to compensation, paid by the State, shall be recognised to victims of intentional crimes committed by using violence against a person and in any case of the offences laid down in Article 603-bis of the Criminal Code, except for those offences covered by Articles 581 and 582, unless the aggravating circumstances under Article 583 of the Criminal Code apply.

### **Compensation for murder, sexual violence, serious bodily injury**

Under Article 583, second paragraph of the Criminal Code, compensation shall be paid to victims or those entitled thereto as set out in paragraph 2-bis in the amount established by the relevant decree as per paragraph 3.

# Financial compensation for women victims of crimes

## *Major challenges and current legal practice*

### Legislative reference

- Legislative decree no. 204/2007
- Law 7 July 2016 no. 122 (European Law 2015-2016), Articles 11 – 16
- Law 20 November 2017 no. 167 (European Law 2017), Article 6
- Law 30 December 2018 no. 145 (2019 Budget Law), Article 1, paragraphs 593 – 597

## The compensation for damage in the EU legal framework

EU Directive 2004/80/EC of 29 April 2004: compensation to crime victims.

Article 12 of this Directive highlights national compensation system:

*“All Member States shall ensure that their national provisions provide for the existence of a compensation scheme for victims of violent intentional crime committed in their respective territories which guarantees fair and appropriate compensation to victims”.*

Legislative decree no. 204/2007: partial implementation of the Directive

## Transposition of Directive 2004/80/EC

### Law 122 no. 122/2016

- Full implementation of Directive 2004/80/EC relating to compensation to crime victims
- Later amended by European Law 2017 (Law No. 167 of 2017)
- The legislator recognized the right to compensation "to the victim of a crime wilful misconduct committed with violence to the person and in any case of the crime referred to in Article 603-bis of the Penal code, with the exception of the offences referred to in Articles 581 [beatings] and 582 [personal injuries], unless that the aggravating circumstances provided for in Article 583 of the Penal Code are met"
- Compensation shall be granted for the reimbursement of medical and welfare expenses; for crimes of sexual violence and homicide
- Compensation shall in any case be paid to the victim or to those entitled under him/her, even if no expenses are incurred medical and welfare services

## Transposition of Directive 2004/80/EC

### Article 11, Law no. 122/2016

- Recognises the right of the State to compensation for victims of violent intentional crimes, without prejudice to the provision of compensation for victims of certain crimes under other legal provisions
- Victims have to prove the damages suffered and wait for the judgement of the perpetrator to be final in order to obtain compensation

## Conditions to have access to compensation

### Article 12, Law no. 122/2016

Compensation shall be paid under the following conditions:

- the victim has already unsuccessfully brought an action against the perpetrator of the crime to claim damages;
- the victim has not participated, even unintentionally, in the commission of the crime;
- the victim has not been convicted by a final judgment or, at the time of filing the request, has not been subjected to criminal proceedings for one of the offences covered by Article 407, paragraph 2, letter a) of the Code of Criminal Procedure and for offences committed in breach of the rules to fight against income tax and VAT evasion;
- the victim, in this capacity and as a direct and immediate result of a crime, has not received sums of money in the amount, or exceeding the amount, due pursuant to Article 11 from public or private entities;
- if the victim, in this capacity and as a direct and immediate result of a crime, has already received sums of money in a lower amount than the amount due pursuant to Article 11 from public or private entities, he/she shall only be paid the balance thereof;
- in case of death of the victim as a result of a crime, the conditions laid down in paragraph 1 shall be satisfied, apart from the victim, also with respect to the those entitled to compensation under Article 11, paragraph 2-bis.



## Request for compensation

### Article 13, Law no. 122/2016

1. A request for compensation shall be submitted by the person concerned and shall be accompanied by the following documents whose lack shall be a ground of inadmissibility:

- a. a copy of the judgment of conviction or a final decision concluding the trial because the perpetrator of the crime is still unknown;
- b. documents certifying that an action has already unsuccessfully been brought against the perpetrator of the crime to claim damages;
- c. a statement on the capacity of those entitled to compensation under Article 11, paragraph 2-bis;
- d. medical records showing the costs incurred for treatment or a certificate of death of the victim of crime.

2. The request shall be submitted within sixty days of the final decision concluding the trial because the perpetrator of the crime is still unknown, or of the latest measure of the legal action that has unsuccessfully been brought or of the day on which the criminal judgment has become final.

## Funds for compensation

### Article 14, Law no. 122/2016

This provision extends the use of the Fund for Solidarity with Victims of Mafia-type Crime, Extortionary Claims and Usury (renamed) to victims of violent intentional crime.

The Fund is funded by an annual State contribution of 2,600,000 euro from 2016 onwards.

## Amount of compensation

The amount of compensation shall be determined by decree of the Ministry of the Interior and the Ministry of Justice in agreement with the Ministry of Economics and Finance, and major relief is to be ensured for the victims of sexual violence and murder, in particular for the children of the victim in case of murder committed by a spouse, including a separated or divorced spouse, or a person who is or was involved in an emotional relationship with the injured person.

Ministry of the Interior, Ministerial Decree of 31 August 2017 – Amount of compensation for victims of violent intentional crimes:

- **Murder:** 7.200 euro; 8.200 euro for the children of the victim if the crime has been committed by a partner or ex partner
- **Sexual violence:** 4.800 euro
- **Other crimes:** 3.000 euro for refund of medical expenses

## Amount of compensation

The decree of 31 August 2017, with the planned figures, does not even come close to guaranteeing a fair compensation to the victim by the State, in the absence of the possibility of compensation by the offender.

On the basis of numerous judgements that have become final, the Courts have set much more compensation than the August decree for sexual assault. The figures included in the decree are a further “slap in the face” to the right to full justice.

## Authorities concerned

### Authority in charge of the decision

*Ministry of the Interior*

Commissioner for coordinating solidarity initiatives in support of victims of mafia-type and violent intentional offences

### Authority to provide assistance

Office of the Prosecutor General at the Court of Appeal located in the place of residence of the applicant

## Assessment of the legislation

Critical aspects:

- A “fake” legislative intervention
- Practical difficulties in accessing the compensation
- Strict deadlines to apply for compensation
- Condition of not having received other funds (art. 12 of Law no. 122/2016)
- Financial amendments that do not effectively address the problem



# Thank you for your attention!

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