



# **IMPROVING PROTECTION OF VICTIMS' RIGHTS: ACCESS TO LEGAL AID**

**Research paper on the present legal framework  
and best practices**

**Country Report  
ITALY**

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## Premise

The current country report focuses on the existing legislation and practices regarding access to legal aid for victims of crime. The research was prepared as part of the project *Improving protection of victim's rights: access to legal aid*. The aim of the project was to discover the best legislative and practical models and systematic flaws in each of the following countries: Italy, Spain, Bulgaria, Latvia and Poland. Special attention was given to the situation of particularly vulnerable victims, including foreigners, whose access to justice can be more complicated. |

In particular the research explored international and domestic legislative framework and practices on legal aid to victims, in order to identify the differences and common points to contribute to the development of minimum standards in the protection and assistance to victims.

The methodology used was a combination of desk research, including an analysis of laws and regulations and governmental reports and main research methods including interviews with targeted stakeholders and the administration of questionnaires to relevant stakeholders. In particular an open-ended questionnaire was used to interview privileged observers and law enforcement authorities specialised in the field. The closed type questionnaire was administered to 30 stakeholders, both members of public (police, prosecutors) and non-governmental offices (women's shelter, immigration front office), to see how rules concerning legal aid to victims were applied on an everyday basis.<sup>1</sup> Stakeholders were chosen on the basis of, inter alia, knowledge of law in the area of victim support and experience in working with victims.<sup>2</sup> The main problems encountered were respondents' busy schedules, general disappointment with the functioning of the legal system, professional stress, and difficulty in understanding the legal aid concept.

## 1. Definitions and legislative history

### 1.1. Definition of the victim in Italian legislation

The Italian system of criminal procedure<sup>3</sup> does not provide for specific legal status of a victim of a crime. What is present in Italian *Criminal Procedure Code* (hereinafter, CPC)<sup>4</sup> is the figure of a

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<sup>1</sup> 20 replies were received back.

<sup>2</sup> The stakeholders were contacted by email. A cover letter was sent explaining the theoretical and methodological objectives of the research. Follow up telephone calls were made to increase response rates. Interviews were also conducted with certain stakeholders using the questions from the two questionnaires. One in-depth interview was conducted with an NGO in order to point to general problems in the area of victim support faced by NGOs. In some cases questionnaires were filled in by a group of lawyers, non-governmental officers or judges during a meeting to get a more realistic and complete picture of the situation.

<sup>3</sup>The Italian criminal trial system is divided into investigation and trial. The system is based on the adversarial principle, i.e. evidence of the crime is verified in the discussion phase before the courts. The investigation ends

*persona offesa dal reato* (person who suffers the effects of a crime) - the passive subject of the crime, the person affected by the act or omission, constituting the crime/misdemeanour. Procedure-wise, this is the victim, if he/she does not have a specific procedural status. The Code also delineates the figure of the *danneggiato dal reato* (the offended person/civil party/plaintiff) - the person seeking compensation within the framework of criminal proceedings for the damage incurred. In this capacity, the victim will have a more active role.

The distinction between a civil party and the victim is important, since it is assumed that the victim is directly interested in the prosecution and punishment of the offender, while the damaged person seeks to obtain compensation for the damages he/she sustained. When the victim of the crime dies as a direct consequence of an offence, his/her rights may be exercised by his/her 'close relatives', defined as the parents, children, siblings, uncles, aunts and nephews of the direct victim (§307 *Criminal Code*), as well as foster parents and children and co-resident partners.

## 1.2. Definition of legal aid in domestic legislation

Legal aid both for the indigent subjects of the crime and offended persons/civil parties is regulated in *Testo unico in materia di spese di giustizia D.P.R. , testo coordinato 30.05.2002 n° 115* (Decree 115/2002 Consolidated rules and regulation on legal costs)<sup>5</sup> without a specific definition. The Decree regulates legal aid for both offenders and victims. The only condition relating to obtaining legal aid is economic, except for victims of *femicidio* and genital mutilation. If during the trial the victim obtains legal status and is entitled to civil compensation, which amounts to more than the economic limit established for obtaining legal aid, they are required to reimburse the legal costs incurred.

The institution of legal aid is guaranteed on constitutional level (Art. 24, par. 3)<sup>6</sup> and there have been numerous efforts to build up the legislative regulations. Law No. 533 of 1973 established for the first time legal aid provisions, but only in labour disputes and social security issues. This law introduced into Italian legislation the principle of remuneration paid by the State for defenders and other subjects who carry out their work on behalf of people with little economic means. Subsequently, Law No. 117/1988 regulated legal aid in judgments for civil liability of judges. Only in 1990, following the enactment of the new Criminal Procedure Code, was State

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with the decision whether to prosecute or not the person under investigation (preliminary hearing), whilst the term trial refers to the stage of the procedure in which evidence is provided.

<sup>4</sup> **Italian Parliament** (1988): Codice di procedura penale [Code of Criminal Procedure] (Testo coordinato ed aggiornato del D.P.R. 22 settembre 1988, n. 447), Rome: Italian Parliament, available at: <http://www.altalex.com/index.php?idnot=2011> (29 November 2013).

<sup>5</sup> Testo unico in materia di spese di giustizia [Consolidated rules and regulation on legal costs] (D.P.R. , testo coordinato 30.05.2002 n° 115), available at <http://www.altalex.com/index.php?idnot=4777>.

<sup>6</sup> According to Article 24 of the Constitution of the Italian Republic, 'everyone can take legal action to protect their legitimate rights and interests. Defense is an inviolable right at every stage and level of the proceedings. The indigent are protected through appropriate institutions and defense at each level of jurisdiction. The law determines the conditions and means for the redress of judicial errors.'

legal aid provided in criminal proceedings and in civil proceedings for compensation and criminal injury. All these provisions, however, provided no unified framework of legal aid, but rather, limited, specific norms within individual jurisdictions.

The enactment of the recent law No. 134 of 29 March 2001 reformed the entire system of legal aid for the indigent in criminal proceedings, civil, administrative procedures, as well as those of voluntary jurisdiction. The law reformed Law No. 217/1990 and established state-provided legal aid also in civil and administrative matters. Law No. 134 was never put into practice, as it was transfused in Decree 115/2002.

## **2. Right to information about victims' legal situation**

The right of the person, harmed by the crime, to information about his/her legal situation is an important pre-requisite for him/her to exercise his/her ensuing procedural rights, including the right to legal aid. Lack of proper information, on the other hand, often discourages victims from pursuing their claims and defending their rights and legitimate interests.

### **2.1. Information about the procedure for submitting a complaint**

There are no bodies specifically established to inform the victims of crime of their rights - this 'gap' is bridged by some associations established to support people in specific cases, such as associations for the victims of road accidents, associations for the protection of women and children victims of violence, etc. Legal advice is also provided by trade associations which have their own legal departments or are affiliated with law firms, such as trade unions and employees' associations, employers' associations, trade associations, etc.

Having in mind that in the Italian legal system all crimes must be prosecuted (*Obbligatorietà dell'azione penale*, art. 112, Italian Constitution), when a crime occurs, victims first report to a law enforcement authority (Police, *Carabinieri*, *Guardia di Finanza*, the Prosecutor's Office) - §333 and §336 Code of Criminal Procedure. For the offences, prosecuted *ex officio*, the complaint is called *denuncia*. For certain types of lesser offences (e.g. libel, slander, threats, injuries, damage, fraud, embezzlement) the report is not sufficient for the law enforcement authorities to proceed: the victim (or somebody else on his/her behalf) must explicitly request that the offender be identified and punished by the so called *querela di parte*.<sup>7</sup> Police stations

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<sup>7</sup> The persons, entitled to lodge a complaint, are:

- the offended person, personally or by means of a special prosecutor (e.g. a lawyer, formally authorised);
- the parent or guardian, if the victim is under the age 14 or mentally incapacitated;
- if the person under the age of 14 or mentally incapacitated does not have any representative or in the event that the representative is in conflict with the interests of the person represented, the right of action shall be exercised by a guardian ad litem appointed by the court, following the request of the public prosecutor or the bodies that deal with children's care, education, custody and aid;
- as for minors who are at least 14 years old, the right of action may be exercised by them or by their parent or guardian, on their behalf, notwithstanding any adverse will expressed by them;
- the legal representative of a legal person, an institution or an association (who must state the source of their powers of attorney).

offer language support to foreigners, but it may vary from city to city and depending on the language of the victim.

No official form is required or provided for any type of complaint.

When an offence falls among those pertaining to the justice of the peace (misdemeanors) and is prosecuted upon complaint, the victim may - in addition to lodging a complaint - appeal immediately to the judge. In this case, it is necessary to be assisted by a lawyer.

At the moment of the filing of a report/complaint, the offended person has no specific right of information. However, the victim should specify in the complaint, or separately, his/her request to be informed of the prosecution's decision to request the dismissal of the case (§408 para 2 *Code of Criminal Procedure*) and the prosecution's decision to request an extension in time of the investigation (§406 para 3 *Code of Criminal Procedure*), both via a formal service of notification.

## **2.2. Information about status of proceedings**

The victim does not have a specific right to information about status of proceedings, but can call the respective police station on an informal basis and request more information concerning his/her complaint. Investigators are not obliged to confer to the victim the information on the case; in particular, it is forbidden to disclose to the victim any confidential information on the investigation.

The victim may also file a request to the Official Registry of Reported Offences. The Registry can inform him/her about the actual filing of the complaint, and the name of the alleged offender. The prosecutor, however, may withhold that information for a period of time or indefinitely if the investigation requires secrecy.

## **2.3. Information about rights throughout the proceedings**

Upon receipt of the crime report, the Public Prosecutor's Office and the Criminal Police begin investigations, the leading role being played by the Public Prosecutor's Office. Investigators may invite the offended party to recount the facts. The party may, inter alia, appoint a defence counsel and submit pleadings and evidence.

During the preliminary investigation, victims are entitled to receive information concerning the proceeding against the alleged offender via various notifications:

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The right of action is extinguished by the death of the plaintiff, but if the complaint has already been lodged, the death of the victim does not erase the crime. A person is entitled to waive the right to lodge a complaint by providing a written statement signed by the interested party or by his/her representative or by declaring it verbally to the criminal police or to a notary. The waiver may also be tacit: this happens when the victim has a conduct incompatible with the will to complain. The complaint must be filed within three months from the moment the plaintiff has become completely aware of the fact. In case of sexual assaults and sexual practices with minors, the term is six months.

- when evidence is collected in a special pre-trial hearing - *incidente probatorio* (§392 *Code of Criminal Procedure*) before the judge of the preliminary investigations, in the presence of the prosecutor and defence counsel, when there are serious reasons to believe that the victim or informant may later be subject to threats, intimidation, risk of death, flight or memory loss.<sup>8</sup>
- if he/she has declared his/her will to be notified, the victim shall receive notice of the request made by the public prosecutor to the judge to extend the deadline provided by law to conclude the preliminary investigations or the request to dismiss the case.

Once the decision to prosecute is made, the victim must be informed of the date of either the trial (§429 para 4 *Code of Criminal Procedure* – 20 days advance notice for trials that require a preliminary hearing, §552 para 3 *Code of Criminal Procedure* - 60 days advance notice for trials in which a preliminary hearing is not required) or the preliminary hearing (§419 *Code of Criminal Procedure* – 10 days advance notice). Victims can also access the case file in order to decide whether to become civil parties, although practically they are allowed to be present at trials regardless of their role as civil parties.

A decision to dismiss a case is subject to the judicial review of the judge of the preliminary investigation and is notified to the victim, if he/she has specifically requested so. The victim has the right to appeal against such decision before the judge (§410 para 1 *Code of Criminal Procedure*). During the hearing before the judge, the victim, through his or her lawyer, is entitled to support his or her position, requiring a supplementary investigation also highlighting new facts to be explored and indicating the supporting evidence.

During the trial, the rights of the victims depend on whether they have joined proceedings as a civil party. Victims without procedural status are treated as regular witnesses. Civil parties are entitled to various rights, including rights to information and notification, among which:

- to submit pleadings and indicate evidence;
- to participate in the trial represented by a lawyer, whose appointment is mandatory;
- to challenge the sentence in its civil aspects.

#### **2.4. Information about opportunities to obtain legal advice/legal aid**

Individuals can obtain information about getting legal aid from: the bar council, lawyer/solicitor, police force, the court, NGOs and victim support agencies, trade unions, hospitals, immigration front offices and drop in centres (Law No. 134/2001; Decree No. 115, articles 74- 141).

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<sup>8</sup> Statements given at the *incidente probatorio* count as evidence in subsequent proceedings. It is often used in proceedings for sexual offences involving individuals under the age of 16 due to the opportunity for early collection of evidence.

Information about reimbursement is generally given at the trial stage, because victims may claim reimbursement for expenses incurred during the preliminary investigations only if they later join the proceeding as a civil party. Whereas information about opportunities to participate in restorative justice services is generally obtained during specific judicial proceedings, as it is only formally possible in proceedings against juveniles and proceedings before the justice of the peace, while in ordinary proceedings against adults there is no formal restorative procedure.

## **2.5. Information about opportunities to obtain state compensation**

Information about state compensation and application templates are received from the Ministry of Interior. Once the existence of the crime and the culpability of the offender have been verified, the injured party may obtain compensation for the material and non-material damages suffered. To this end, the injured party may choose to appear as a plaintiff in the criminal proceedings and ask for the condemnation of the offender and the liable party, such as a car insurance company, to pay immediately, otherwise he/she may opt for bringing an independent civil lawsuit for compensation through an independent civil trial. The civil lawsuit for damage compensation may be included in the criminal trial, in compliance with the same terms established to appear as a plaintiff between the beginning of the criminal proceedings and the beginning of the trial of first instance.<sup>9</sup>

## **2.6. Information about any special arrangements available to protect victims' interests, if they are resident in another EU Member State or non-EU residents**

Foreigners/non-native Italian speakers, victimised by a crime, can:

- report the crime in their own language to a public prosecutor or any of the State or local police forces;
- use the assistance of an interpreter appointed by the police or prosecutor or police officer in charge of receiving a report, at the expenses of the police;
- join proceedings as a civil party and then be entitled to translation.

Foreign victims receive information about their special entitlements from the relevant authorities.

## **2.7. Ethical issues in providing information to victims of crime**

The provision of support services to victims of crime is very fragmented. Even victim support centres, which are already present in many countries, are still virtually absent. There are few services or support centres for victims, and those that exist are all entrusted to specific

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<sup>9</sup> The conviction in criminal court (with the exception of cases where the criminal trial has ended with a plea bargain or with the issuance of a penalty notice) will be effective towards the victim who appeared as a plaintiff, whilst it will not be effective when the injured party opted only for the independent civil lawsuit, started before the criminal trial or before the pronouncement of the first instance criminal sentence. If the civil action is exerted after the latter period, the criminal decision will be effective in the civil lawsuit. The civil action for compensation may also be exercised regardless of the criminal trial.

initiatives in health care facilities, municipalities and regions. These structures work with the police and the justice system, as well as with social services and voluntary associations in the respective area.

Victims of crime can go to the various regional Police Forces (State Police, *Carabinieri* and *Guardia di Finanza*), where there is always staff to provide practical advice directly or through contacting institutions, organisations, associations, offices and entities giving assistance to victims of specific offences (usury, fraud, racketeering, sexual exploitation) or for cases of vulnerable individuals (children, women, elderly). There is no institutional code of ethics that applies to all those who, for various reasons, provide information and assistance to victims (Law No. 38/2009, Legislative Decree No. 204/2007, Legislative Decree No. 274/2000).

### **3. Legal aid to victims of crime – general considerations**

#### **3.1. Characteristics and selection criteria for a victim to be entitled to legal aid**

Legal aid is generally only provided to victims, appearing at trial as civil parties, under the same conditions to those for defendants (§98 *Code of Criminal Procedure*), if their income falls below the threshold, set by law.

To obtain legal aid, one must have a net income of less than €10,766.33 per year, the limit increasing, only in criminal cases, with € 1,032.91 for each member of the family living with the applicant (e.g. if the applicant has a wife and a child, the income limit is €12,693.98). There are certain exceptions.<sup>10</sup> Finally, there are also some cases where one cannot obtain legal aid, e.g. if he/she has been convicted of crimes of mafia or involvement with other types of criminal associations and of tax fraud and bankruptcy.

Although in Italy there exists no dedicated structure for assistance to victims in criminal proceedings, exceptions cover certain categories of victims and offences, where specific regulations exist for protection through special funds and free legal aid (sexual offences, mafia crimes, usury, etc.) Associations, involved in supporting persons in such specific situations, allow victims to receive free legal advice from their legal advisor, which is different from the system of legal aid, but there are no regulations for funding the legal aid provided by these associations. In certain cases, the local authorities (provinces and municipalities) fund these associations, which therefore can indirectly pay for the legal fees for defending the victims of crime. To receive this kind of aid, the victim has to be a member of the association. Generally speaking, the legal advisors of the associations apply very low fees and practically work for free

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<sup>10</sup> In case of separation, divorce, custody of minor children or other cases involving personal rights, the individual income of the applicant is considered and not that of the other members of the family, paragraph 4 of art. 76 of *Presidential Decree No. 115/2002*. In other situations legal aid is granted regardless of income, e.g. it is always given to victims of crimes of sexual violence, sexual acts with a minor, sexual assault by a group, even if the victim has a higher income limit than that established.

in view of the compensation which the victim may receive from which they can deduct the legal fees.

### 3.2. Special conditions for foreigners – EU and non-EU residents

Special provisions exist in the field of immigration. Art. 18 of the *Consolidation Act on Immigration* establishes the so-called residence permit for reasons of social protection.<sup>11</sup> The victims, having such a permit, are included in aid and social integration programmes provided by the Municipality where they live or stay. A ministerial regulation has established the requirements to identify in each municipality the associations which can aid these persons as well as the availability of suitable facilities which can host them. The residence permit issued under that regime has a duration of six months and may be extended for another year or the necessary period required by the law enforcement authorities and it is revoked if the programme is interrupted or in case of a conduct inconsistent with its purposes. This permit also provides access to social services and education, the person can be registered as unemployed and can be hired, subject to minimum age requirements.

Legal aid is available for all Italian and foreign citizens from EU and non-EU countries, in, inter alia, criminal, civil, administrative, accounting and voluntary jurisdictions before the courts. It must be stated that many asylum seekers and migrants have lost their chance to assert their rights of defence and appeal by having access to legal status, due to the rapidity of the expulsion procedures and review of denials of applications for asylum that is sometimes faster than the procedure for the recognition of legal aid. Added to this are the difficulties of adequate representation by public defenders, the absence of freelance interpreters, together with the immediate execution of the decisions of forced removal, and recently the suspension of the right to appeal.

*The Legislative Decree No. 25 of 28 January 2008*, in addition to intervening on the most controversial issues, such as the obligation of receipt of the application for international protection by police offices and the differentiated regime of detention, addresses appeals against decisions refusing status by a specific provision on legal aid at the state's expense. Art. 16 of the Decree implementing EU directives on asylum procedures provides that:

1. The foreigners may be assisted at their own expense by a lawyer;
2. In the case of appeals to courts, the foreigners shall be assisted by lawyers and are granted legal aid if the conditions laid down by *Decree No. 115 of 30 May*

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<sup>11</sup> The provision reads that 'when, during police operations, investigations or the proceedings regarding one of the offences listed in article 3 of law n.75 of 20 February 1958, or one of those listed in article 380 of the Criminal Procedure Code, as well as during aid interventions of the social services of the local bodies, serious events of violence and exploitation against a foreigner are established and his/her safety is jeopardy due to his/her attempt to escape from one of the organizations committing one of the crimes mentioned above or due to the statements declared during the preliminary investigations or the trial, the chief of police, also upon request of the public prosecutor or with the consent of this authority, issues a special residence permit to allow the foreigner to escape from the criminal organization and to take part in an aid and social integration programme'.

2002 are met. In any case, the foreigner must present a statement of the income earned abroad.<sup>12</sup>

In fact, Italian legislation formally guarantees the right of access to legal aid, governed by the Presidential Decree No. 115 of 2002 and by Art. 98 of the Code of Criminal Procedure, which allows those who are not wealthy, including all citizens, Italians and foreigners, to qualify for free legal assistance in a civil or criminal case. To exercise this right, the victim may make use at no expense of a patron who is the defender. Not all lawyers can defend those who have been granted legal aid. It is necessary for the accused or victim who wants to make use of legal aid to consult one of the lawyers registered in the register of patrons of the State, kept by the relevant Councils of Belonging (Bar councils in Italy). Allegedly, the lawyers in the register are not among the top ranking and often the victim waives the right to free representation and/or opts to be represented by a more skilled lawyer at a private law firm, thus having to pay the fee himself/herself.

#### **4. Scope and extent of legal aid, granted to victims of crime**

Victims of crime have often been ignored by both the justice system and governments. However, during the 1970s groups began to mobilise in the public and private sector for the protection of the rights of victims and for their assistance. In fact there is increasingly growing awareness of the material and emotional needs of the victims both during and after the commission of a crime. Victims may receive assistance from people close to them, but also from official organs of justice and services in the public and private sector. Most of the existing legal system structures, however, are geared towards the perpetrators. As a result, victims are often subjected to marginalisation or even to further victimisation often inflicted by the same justice system that views victims as evidence providers rather than as individuals with needs and rights to be protected.

In recent years however a few improvements have been made, even if these remain largely only formal. There is at present on the Italian territory a national service that deals specifically with victims of crime, which is able to respond to the needs of the victims and avoid further victimisation. However there is need for the foundation of a more comprehensive national service for victims that is recognised and supported at a governmental level. In relation to legal protection, the Italian system of protecting civil liberties (*garantista*) presents a marked

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<sup>12</sup> The Constitutional Court recalls that under Article 24 of the Constitution the right of defense belongs also to foreigners (Judgement nos. 120/1967, no. 109/1974), even if they are foreigners illegally present on the territory of the State, so the expelled foreigner has the right to return to Italy solely for the purpose and for the time necessary to attend the trial (Judgment no. 492/1991). In any case, access to justice concerns not only the foreigner as suspect or defendant in a criminal case, but also as a victim of crime (with the associated right to bring a civil case) or recurrent in the work process to defend their rights as workers or plaintiff or defendant in civil proceedings involving the rights of the person and the family. The foreigner's right to know the contents of the act and the right to have an interpreter of their choice and compensation from the State was reaffirmed and clarified by the Constitutional Court.

difference in the treatment of victims and offenders, even if the Constitution affirms the principle of equal treatment.

#### 4.1. First moment when victims can use legal aid

Victims can generally use legal aid, if constituted as civil parties, from the trial stage (with the exception of *incidente probatorio*), if they satisfy the minimum income threshold under *Decree 115/2002*. At the trial, they are represented by lawyers, specialised in criminal law, who lodge the so-called plaintiff act in which they assess the quality and quantity of the non-material damage suffered by the victim because of the offence.

#### 4.2. Stages of criminal proceedings, where victim can receive legal aid

Legal aid for victims is available only during the trial, when they appear as civil parties, from the preliminary hearing and the court summons to the possible appeal to the Court of Cassation. Concerning any previous stages, the victim is considered only as an injured party and declarant and cannot have any other role. From this point of view, it is deemed that the aid provided is restricted, considering that investigations may last several years. The only exception is the *incidente probatorio*, where victims' rights include free legal aid and assistance in the case of needy victims, by virtue of §74 of the *Decree 115/2002*. Because of the stringent means test to pass, the provision is only relevant for a limited number of victims. In 2009, free legal aid was extended to victims of certain sexual offences (cf. *Decree 11/2009*). Legal aid is granted regardless of income, i.e. is always given to victims of crimes of sexual violence, sexual acts with a minor, sexual assault by a group, even if the victim has a higher income limit than that established (*Decree Law, coordinated text 14.08.2013 n° 93*, OJ 16.08.2013).

#### 4.3. Legal aid in obtaining compensation

The system of compensation is very much related to the separate frameworks for aiding victims of specific crimes. In general, there are a substantial number of rules that guarantee to victims of certain crimes economic intervention by the State. However, Italy has no general system of compensation for violent intentional crimes, which is also a subject of a procedure against the country for infringement of EU law. Italian legislation only provides for compensation for the victims of some violent intentional crimes, such as terrorism and organised crime and the country has not taken the necessary steps to amend its legislation - as a result some victims of violent intentional crime may not have access to compensation which they are entitled to.

First, there are the victims of *usury*, who can be persons running all types of businesses or performing liberal arts or professions, being offended parties in the relevant criminal proceedings. Besides the crime of usury, these people are also victims of extortion because the perpetrator of the usury usually induces them to hand over the extra money by using violence and threat. For the victims of that type of crime and/or requests for undue payments (*pizzo*) by members of the organised crime, the law provides the possibility to receive money from the funds for those who decide to report a crime and refuse to pay the illegal requests for money. More specifically, the Ministry of the Interior has set up a solidarity fund for victims of extortion

subject to requests for undue payments. According to Law No. 44 of 23 February 1999, provisions concerning the Solidarity Fund for victims of extortion and usury (GU n.51 del 3-3-1999), the victims of extortion and of refundable damages may count on rapid disbursement of contributions.

Law No. 108 of 7 March 1996 establishes two Funds:

1. Solidarity Fund for the victims of usury (Article 14): applies only to events occurred after 1 Jan 1996 and is earmarked for loans to persons engaged in business or self-employment that are parties to criminal proceedings for the crime of usury;
2. Fund for the prevention of usury (Art. 15): earmarked contributions to consortia or cooperatives, collective credit guarantee (CONFIDI) or to foundations and associations recognised (as having the characteristics specified by the Ministry of Treasury) for the prevention of usury.

Art. 18 bis of Law No. 44 of 23 February 1999, *Provisions Concerning the Solidarity Fund for victims of extortion and usury* (OJ 51 of 03.03.1999) has unified the Solidarity Fund for the victims of extortion referred to in Article 18 of the Law and the Solidarity Fund for the victims of usury referred to in Article 14 of the Law March 7, 1996, n. 108. This unified Fund is subrogated as to the sums paid to the persons entitled towards those responsible for the damage referred to in this law.

In particular, the types of victims who may apply for these contributions provided by law are those who also suffered from *extortion*. These persons may apply for a full compensation of the damage suffered, as well as an interim compensation of up to 70 per cent of the damage suffered. In their application, they should specify:

- who they are and why they are applying for compensation;
- the date and the place of the complaint;
- the fact of having refused or no longer accepting the extortion requests and
- the type of business ran at the time the extortion took place.

Moreover, they should enclose an indication of the damage suffered and the causal connection between the harmful event and the purpose of the extortion, tax and income statements from the two years preceding the harmful event or the extortion requests, the amount requested as interim compensation and a statement regarding the possible application for the benefits provided by Law No. 302/90 (regulations in favour of victims of terrorist acts and organised crime), specifying if for the same offence they have received any interim compensation related to that law or to any other and indicating the amount, plus copies of any insurance policies.

To be helped and supported in the submission of the application, the interested persons may apply to the National Council of their professional association, to one of the National Trade Associations, represented by CNEL (the Italian National Council of Economy and Labour) or to one of the anti-racketeering organisations registered with the Prefectures. The application should enclose the consent declaration of the applicant.

Both for usury and extortion, a request for suspension of legal deadlines may be presented together with the compensation demand. This suspension, if approved, entitles the applicant to have specific deadlines suspended for one year after the date of the offence, such as deadlines for administrative fulfilments, bank loan and mortgage instalments, as well as any other enforceable act; tax payments (for 3 years); legal, conventional, substantive and procedural deadlines causing the party to be no longer entitled to the right, act or exception expired or due to expire within a year from the date of the offence; execution of measures and deadlines regarding the release of properties, security and property foreclosures, including sales and mandatory allocation.

This case of suspension concerns:

- a person running a business who suffered extortion, being he/she an entrepreneur, a tradesman, a craftsman, or a person performing liberal arts or profession, as well as, upon approval of the interested party, the National Council of their professional association or one of the National Trade Associations, represented by CNEL (the Italian National Council of Economy and Labour), or one of the anti-racketeering and anti-usury organizations registered with the Prefectures, aimed at providing aid and advice to persons who suffered extortions;
- members of associations of solidarity;
- others (injured third parties);
- survivors.

Secondly, there is the revolving fund for solidarity with the victims of organised crime, extortion and usury, which includes, according to Section 1, paragraph 6 sexies of Law No. 10 of 26.2.2011 the existing Funds:

- Solidarity Fund for the victims of extortion and usury, established by Presidential Decree 455/99, which merged the existing Solidarity Fund for the victims of usury and the Solidarity Fund for the victims of extortion, regulated by laws 108/96 and 44/99, respectively.
- Revolving fund for solidarity with the victims of organised crime, established by Law No. 512/99.

However, the two different Committees of Solidarity continue to be organs of the 'merged' Fund. They are based at the Ministry of the Interior and they are chaired by a Commissioner appointed by the government who has deliberative functions.

#### **4.4. Legal aid to participating in restorative justice mechanisms**

conciliation during the investigation stage can be reached only in the cases for which the victim's complaint is a condition for prosecution. Again in such cases, the victim can withdraw his/her complaint at the trial or during the appeal. Where a complaint is withdrawn the legal costs and expenses must be paid by the offender, unless otherwise determined. A reconciliation procedure is possible in criminal proceedings for minor offences before the

justice of the peace and in proceeding before the juvenile court for acts, committed by minor offenders.

There are also cases where plea-bargaining is possible between the public prosecutor and the offender. In case plea-bargaining is made at the investigation stage, the court cannot pass a judgment on the civil claim and the victim needs to resort to a civil action.

#### **4.5. Length of period legal aid covers**

Legal aid for civil parties lasts for the duration of the trial and the appeal, the exception being the *incidente probatorio*, which takes place pre-trial.

#### **4.6. Language(s) in which legal aid is provided**

Criminal proceedings take place in Italian with an appointed interpreter to represent those who do not speak the language. Documents and translations can be arranged by the appointed legal representative.

#### **4.7. Payments for legal aid**

In order obtain legal aid one must have a net income of less than € 10,766.33 per year, that limit increases, only in criminal cases, with € 1,032.91 for each member of the family living with the applicant. In case of separation, divorce, custody of minor children or other cases involving personal rights the individual income of the applicant is considered and not that of the other members of the family (paragraph 4 of art. 76 of *Presidential Decree No. 115/2002*). In other situations legal aid is granted regardless of income, e.g. it is always given to victims of crimes of sexual violence, sexual acts with a minor, sexual assault by a group, even if the victim has a higher income limit than that established.

#### **4.8. Reimbursement of victims' legal fees**

When the criminal court sentences the defendant to pay compensation and reimbursement of legal expenses incurred by the plaintiff, the offender is forced to comply by paying the sum fixed by the judge in the criminal conviction. If the evidence obtained during the proceedings is insufficient to quantify the exact amounts of the above, the judge puts the parties before a civil judge who after a lawsuit establishes the actual monetary quantification of the damage. To avert the practical disadvantage of having to bring a civil action after the establishment as a civil party in criminal proceedings aimed at quantifying all of the damages, the plaintiff may ask – always in advance or in written form at the end of the trial - the accused in the case of conviction to the generic damages, which is called provisional and is ordered by the criminal court, to pay a sum provisionally enforceable.

If the criminal court believes it can directly make the payment for any damage claimed by the victim, the judgement will be put in force in order to save time and money for the plaintiff of a civil law suit. In the case of payment by the criminal judge of all damages claimed by the

plaintiff (without providing the intervention of the civil court), the judge may - at the request of counsel for the plaintiffs - declare the sentence to compensation (or refunds) provisionally enforceable, when the reasons are justified.

This order of payment includes the costs and liabilities incurred by the plaintiff to participate in the criminal process (essentially the costs for legal assistance when one does not benefit from legal aid, if they satisfy the requirements).

## **5. Legal aid to particularly vulnerable victims**

### **5.1. Children**

Victims under 16 years of age are heard in a pre-trial hearing, before the judge of the preliminary investigations, in the presence of the prosecutor and defence counsel and their statements count as evidence in subsequent proceedings. During trial, minors are heard in a private court session. Minor victims of sexual offences are not asked questions about private and sexual life, unless such questions are essential in determining the fact of the case.

## **6. Institutional structure and capacity of the system of legal aid for victims of crime**

### **6.1. Public funds for victims' legal aid – means of allocation**

There are no predetermined funds for victims of crime because they are private parties participating in a public trial. However, it is important to mention that for some types of offences, especially those regarding organised crime, some non-profit organisations patronised by the State provide legal advice and aid and possible compensation.

## **7. Best practices on access to justice for victims of crime**

A famous initiative took place in the southern part of the country, province of Lecce, called 'On the Road' and having immigrants as a target group. It was implemented in 2010-2012 by LILA Lecce and was funded by the Institute of Mediterranean Cultures and the Province of Lecce, with the collaboration of Upter - Università Popolare di Roma, the Italian Council for Refugees and Centro Studi Kairòs. Under the project, a team of cultural mediators and lawyers travelled with a camper van to remote villages in order to give free advice to immigrants and refugees, regarding their rights and health. The team was in constant contact with the ATM Immigrants - Immigration Services Salento, as well as the mediators in the Areas of State and at the Centre for Employment.

Under another initiative, *the Support Center and listening service for victims of violence – Demeter* directed its efforts towards victims of violence experienced in their own home – insults, threats, physical violence, blackmail, economic, emotional and psychological abuse, and stalking. In terms of support, it has provided:

- guided medical advice dedicated to the victims of gender violence and stalking; appropriate health services with active support during the diagnostic and therapeutic stage;
- assistance and legal support including proper reporting;
- specialist consultations in order to detail the events of violence;
- preparation of guidelines and protocols for health professionals;
- consulting for telephone operators of health care facilities lacking adequate services;
- activation of the network of public and private services to support victims of violence;
- specific training of the operators.

The Center Demeter helps victims escape from violence and accompanies them on the path of immediate help and restoration of their skills and resources. The centre opens up areas of active listening in which the person can state what has happened to them and describe their mood, fears and needs.

The project *Daphne Network*<sup>13</sup> provides for the establishment of a network of initiatives and services able to respond in an articulated manner to the needs of people facing the consequences of a crime. It intends to take charge of the effects of crimes related to domestic violence and other violent criminal events that affect the physical and psychological integrity of individuals. It helps individuals who are considered to be in a state of victimisation and who consequently decide to report their grievance in a formal way to a court or a police station. The project does not deal with crimes committed against children, since the latter are protected by services and initiatives specifically dedicated to them.

The Network also provides ‘Never be alone! An aid to immigrant women’ – an active service in four languages: Italian, Arabic, English and French, which receives requests for help from all women of all nationalities, victims of abuse and psychological and physical violence, and provides support for victims of violence, from first aid to psychological support, giving legal advice and information regarding the anti-violence centers in Italy.

A *toll-free line* is also maintained, 0800911753, tackling violence against women in Arabic, Italian and French and offering psychological support and legal guidance in addition to specialised structures in the fight against violence inflicted on women. It provides information about complaint procedures, moral and legal support.

The *Family Counseling of the Italian Red Cross* in Genoa offers many services including counseling and legal assistance.

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<sup>13</sup> Subject leader: Province of Turin - Department of Political Active Citizenship, Social Rights and Equality; Subject partners: 1. City of Turin - Department of Health, Social Policy and Housing; 2. Local Health TO2 - Department of Mental Health Giulio Maccacaro; 3 . Gruppo Abele Onlus Association; 4. Association Ghenos. Promoters and other parties involved: the Public Prosecutor of Turin.

## 8. Main Research Findings

In Italy, stakeholders are fairly negative about victims of crime receiving sufficient information about their legal status. Issues, gathering most concern on the part of experts, are the opportunities to participate in restorative justice services and opportunities to obtain state compensation, where clear need for state intervention via information campaigns is seen. Specifically on legal aid and advice, 55 per cent of stakeholders deem the level of information fairly sufficient and 5 per cent deem it very sufficient. This response can be seen as partly encouraging, but the level still needs to be raised and intervention is also needed in this area.

Problems, related to the role of police in the information process, came out during interviews, including statements that immigrants complain of bad treatment at the hands of the police and are as a consequence reluctant to report the crimes or sometimes drop cases. Stakeholders were also asked to comment on whether there were problematical areas in victims being provided with information. Only 15 per cent stated that there were no problematical areas again showing a necessity to intervene to improve victims' rights. The most problematic area is considered to be the legislative framework.

It was reported by 55 per cent of stakeholders that conditions victims have to meet in order to qualify for legal aid are restrictive, whilst just 15 per cent state that they are neither restrictive or favourable, maybe due to their lack of knowledge in the area.. However, 30 per cent of stakeholders state legislative framework as the most problematic area in victims' state-provided legal aid, as stipulated in relevant legislation.

In fact, Italian legislation formally guarantees the right of access to legal aid, governed by the Presidential Decree No. 115 of 2002 and by Art. 98 of the Code of Criminal Procedure, which allows those who are not wealthy, including all citizens, Italians and foreigners, to qualify for free legal assistance to promote or defend themselves in a civil or criminal case. To exercise this right, the victim may make use at no expense of a patron who is the defender. Not all lawyers can defend those who have been granted legal aid. It is necessary that the accused or victim who wants to make use of legal aid consults one of the lawyers registered in the register of patrons of the State, held by the relevant Councils of Belonging (Bar councils in Italy). Allegedly, the lawyers in the register are not among the top ranking and often the victim waives the right to free representation and/or opts to be represented by a more skilled lawyer at a private law firm, thus having to pay the fee himself/herself.

The research further found that 30 per cent of the stakeholders approached via questionnaire stated that the offender's right to legal aid is broader and better whilst 60 per cent state that offenders and victims have equal rights to legal aid. This percentage is seen as quite low and needing appropriate intervention.

Stakeholders approached via questionnaire reviewed the state of legal aid and advice to victims of crime both during the investigation of the crime and during trial and appeal.

The figures below report on the issue regarding sufficiency of aid and advice during investigation institutions:

- Victim support services: 85 per cent agree they provide sufficient aid;
- Specialised legal aid authorities: 70 per cent of respondents agree that they provide sufficient aid;
- Bar Councils: 45 per cent of respondents agree that they provide sufficient aid;
- NGOs: 50 per cent of respondents agree that they provide sufficient aid;
- Legal Clinics: 30 per cent of respondents agree that they provide sufficient aid;

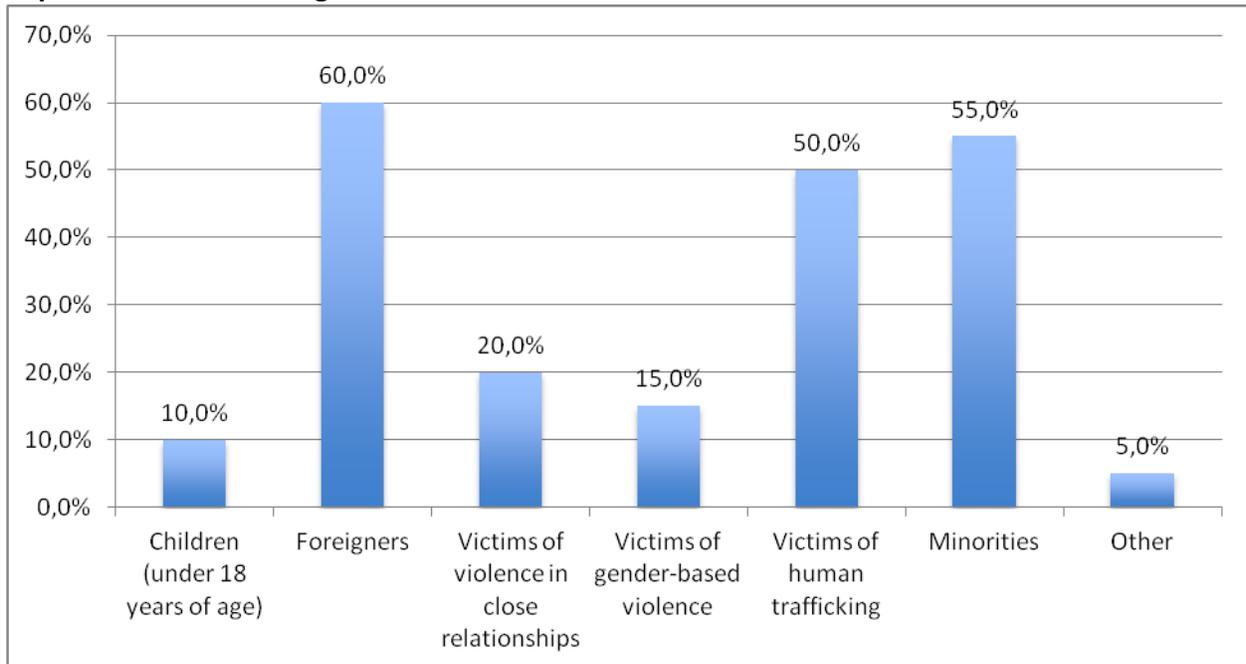
Seemingly, stakeholders perceive that victim support services function better than other institutions, including NGOs which are involved in assisting victims. The legal clinics have the lowest percentage of agreement, thus showing that work needs to be done in this area, also because there is little knowledge as to how these function in Italy with 25 per cent of stakeholders responding that they do not know.

During trial and appeal, victim support groups are seen to be adequate in giving advice to victims of crime, the percentage is also high for bar councils. The figure however is very low for legal clinics thus highlighting the need for intervention in this area. The figure is also quite low for NGOs. For authorities, just 15 per cent respond positively to this question (strongly agree/agree), thus highlighting the need for intervention in this area:

Respondents state that their own role in assisting victims during investigation practically consists of online information materials (70 per cent), 50 per cent work on legal consultation and 45 per cent on representation before authorities, while about 15 per cent work on drafting legal documentation and referral and participation in restorative justice mechanisms.

An overwhelming majority of respondents approached via questionnaire – 85 per cent – disagree that the advice made available to victims of crime meets the demand during the stage before the reporting/opening the proceedings on the crime, 60 per cent expressing even strong disagreement. At the phase of investigation, there is no notable difference between those who agree and disagree, while for the trial phase those who agree prevail by 60 per cent over 40 per cent of those who disagree. This is indicative of the crucial importance of the first phase, where victims come into contact with authorities - if the assistance is not adequate, many victims may give up and not continue with their cases:

**Figure 20 Are there any specific groups of victims in Italy who fall into a category that is more deprived of access to legal aid?**



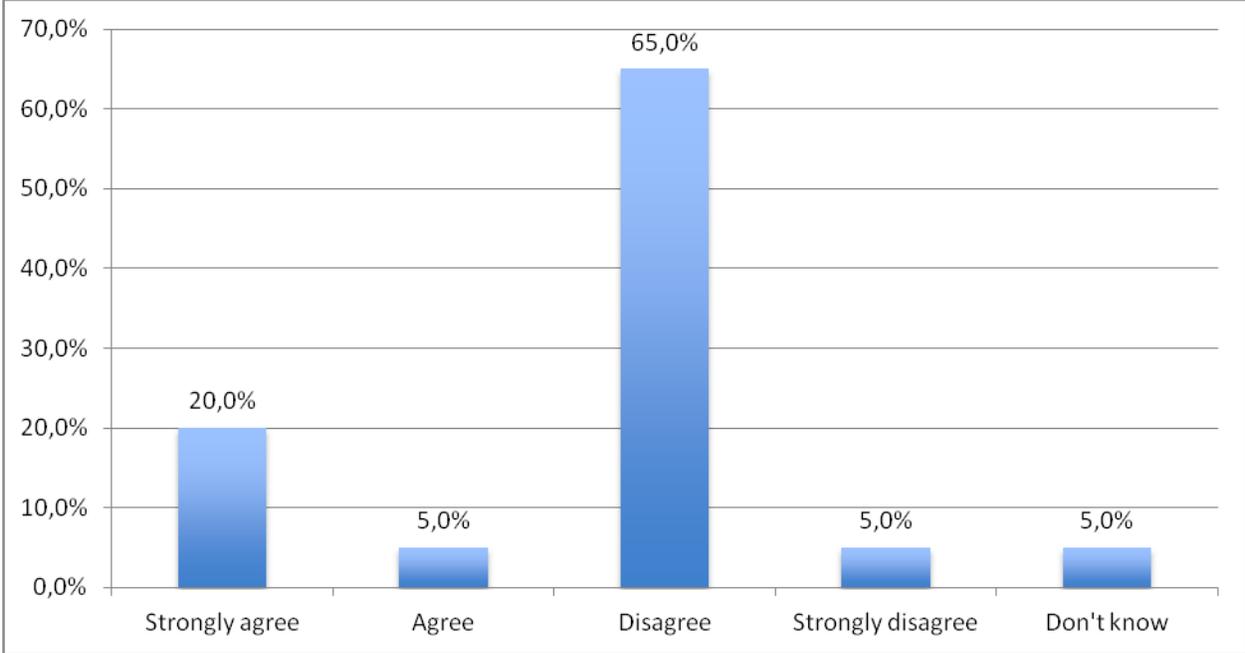
Those indicated as being denied access are victims of human trafficking, minorities and foreigners – a situation, confirmed by interviews. Among the factors cited, influencing the situation, are: lack of finances to assist these groups, lack of priority with available finances being used to assist other groups of victims, lack of expertise and training to work with such victims, especially taking into account the often transnational nature of crimes those victims are affected by.

The impression of stakeholders approached via questionnaire on the phase before the reporting of the crime/opening of proceedings is quite negative, regarding the equal standard of legal aid throughout the country's regions – 65 per cent of respondents disagree that this is the case at this phase, whilst there is no notable difference between those who agree and disagree regarding investigation and trial. Stakeholders point out that even though the norms regarding access to legal aid are equal in every region, the actual assistance and consultation given vary, because these depend on the initiative of local institutions, private structures and organisations. Southern regions, in particular, are seen to function less efficiently than those in the north, especially regarding immigrant victims, in the view of local NGOs. When asked about the problematic factors, regarding regional level access to legal aid, respondents stated as main problem the availability of advice throughout the different geographic areas, while the lack of awareness among citizens was rated second in the typology of problems.<sup>14</sup>

<sup>14</sup> It is important to note that around 30 per cent of stakeholders did not respond to this question, due mostly to the difficulty of the question and also to their knowledge of this area.

Furthermore, 70 per cent of stakeholders approached state that they do not agree that the individuals providing legal aid and advice to victims of crime have received sufficient general and specialist training:

**Figure 25 Would you agree that the persons, providing legal aid and advice to victims of crime in Italy, have received sufficient general and specialist training?**



Source: COINFO - Italy

It was further found that 55 per cent of respondents do not agree that the practices of the entities providing legal aid and advice to victims of crime respond to victims’ needs thus showing training courses are needed.

Interviews with attorneys and NGOs show that best rated lawyers usually do not accept to work for legal aid cases, but rather take cases against payment. This is to show that even if legal aid is obtained, it is not certain that the best lawyers represent the victims. Another issue reported is that the payments for legal aid are substantially delayed, which further discourages attorneys from taking those cases. In-depth interviews show that lawyers have a lot of influence over their victim clients and they can dissuade them from proceeding due to their own little interest in pursuing the case, thus acting as gatekeepers. There is much work to be done in the area of assistance to immigrants and training police officers and medics who work at legal clinics on giving advice to victims.

### 9. Conclusions and recommendations

The **Italian** system suffers a cultural gap about the importance of the victims’ status - Italian legal system has higher awareness on the detainee status and on the related problems caused

by overcrowded prisons, than on the victims' status. A clear and comprehensive framework on victims' rights is missing in the Italian legal system – substantive assistance is only offered to those who are seriously threatened by certain types of offences and the support is given because of their contribution to the investigations. A recent initiative piloted by local communities consists of programmes devoted to the reintegration of the victims of crimes in the society. This help is, in certain circumstances, more appreciated than the *stricto sensu* financial compensation. Again, the risk in Italy is that priority is given to the reintegration of those who have committed a crime and have served their prison term, than to the awareness of the emotional distress of victims of crimes. In 2001, the Minister of Justice set up an "Observatory on problems and support of the victims of crimes" (*Osservatorio sui problemi e sul sostegno delle vittime dei reati*) with the main task to raise the public awareness on the rights and needs of victims. However, in 2003 the Observatory was closed. Re-establishing such an important institution would be very useful for opening a fruitful debate on the victims' status which remains weak in the Italian society. Furthermore, several drafts recognizing a set of rights to the victim during the pre-trial investigations have been submitted to the Italian Parliament and their adoption should be supported.

#### **Annex 1 Italy state authorities involved in providing legal aid**

<b>Name of entity</b>	<b>Ministry of Justice</b>
<b>Postal address</b>	via Arenula 70 - 00186 Roma
<b>Telephone</b>	+39 6 68851
<b>Fax</b>	
<b>E-mail</b>	<a href="mailto:dgpenale.dag@giustiziacert.it">dgpenale.dag@giustiziacert.it</a>
<b>Website</b>	<a href="http://www.giustizia.it/">http://www.giustizia.it/</a>

<b>Name of entity</b>	<b>Ministry of Interior</b>
<b>Postal address</b>	Piazza del Viminale n. 1 - 00184 Roma
<b>Telephone</b>	+39 6 4651
<b>Fax</b>	
<b>E-mail</b>	<a href="mailto:liberta.civiliimmigrazione@interno.it">liberta.civiliimmigrazione@interno.it</a>
<b>Website</b>	<a href="http://www.interno.gov.it/mininterno/export/sites/default/it/">http://www.interno.gov.it/mininterno/export/sites/default/it/</a>

#### **Annex 2. NGOs involved in providing legal aid to victims of crime**

• Anti-trafficking Helpline - 800 290 290
• Anti-violence Helpline - 1522
• Anti-discrimination Helpline - 800 90 10 10
• Helpline for victims of genital mutilation - 800 300 558
• Helpline for victims of terrorism and organized crime - 06.46548373 - 06.46548374 - 06.46548375
• Helpline for victims of crimes related to the mafia - 800 191 000
• Helpline for victims of extortion and usury - 800-999-000
• Helpline in all languages to report incidents of discrimination and racism - 800 90 10 10
• Emergency Helpline for minors - 114

### **Associations**

1. Trade Unions: CGIL – CISL - UIL
2. Libera - 0832 683429-683430
3. Women's refuge Rome - 06 6840 172006
4. Consumers Association
5. Rete ADA Nazionale– Association for rights of the elderly – 06 48907327
6. Rete Dafne (Help for victims of violence) - 011 5683686