



**International
Lawyers
Project**

ITALY

**VICTIMS OF CORRUPTION:
NATIONAL LEGAL
FRAMEWORKS**

**DATABASE
2022**

**SOURCE: INTERNATIONAL LAWYERS
PROJECT**

VICTIMS OF CORRUPTION WORKING GROUP

UNCA CIVIL
Coalition
SOCIETY

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The Victims of Corruption: National Legal Frameworks Database is an initiative of the UNCAC Coalition Working Group on Victims of Corruption.

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¹ Note, we are only qualified to advise on US and UK law, and as such are not qualified in this jurisdiction.

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1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organizations and citizens may have legal standing in corruption-related cases.

1.2 Type of Cases

- Civil
- Administrative

1.3 Legal basis under which citizens have legal standing

Criminal bribery and corruption claims can only² be brought by public prosecutors;³ private parties do not have standing to affirmatively bring these claims.

Standing to bring civil claims requires the plaintiff to show:

- (i) An interest in acting (*interesse ad agere*),⁴ which requires that complainants present something more than a hypothetical claim. The prevailing doctrine defines the interest in acting as an interest in the achievement of a utility or advantage not obtainable without the intervention of the judge. The interest must be personal (in the sense that the advantageous result must directly concern the plaintiff), current (in the sense that it must exist at the moment in which the claim is filed), and concrete or must be evaluated with reference to a prejudice that actually occurred to the detriment of the plaintiff. In making this determination, Italian courts focus on the legislative intent behind the statute the defendant has allegedly violated. Note that the

² Unlike bribery and corruption offences, minor criminal offences can be prosecuted on the basis of a complaint by the victim.

³ In the Italian legal system, public prosecutors are magistrates—not a government agency—and, as judges, they are independent from the executive power.

⁴ Article 100 of the Italian Code of Civil Procedure

burden of proof of interest in the claim is higher in administrative courts.

- (ii) The power or authority to act (*legittimazione ad agire*). To establish *legittimazione ad agire*, the plaintiff must allege in the initial pleadings that the defendant violated either a “subjective right” (*diritto soggettivo*) if the case is brought in the “ordinary” civil courts, or a “legitimate interest” (*interesse legittimo*) if the case is brought in the administrative courts.
- (iii) The existence of a provision that contemplates the right claimed by the plaintiff.

While the existence of (iii) above is a fairly straightforward element, the other elements can be more complicated to prove and the judge will deny participation to the proceeding in the absence of these.

Recognized associative bodies⁵ can also initiate proceedings before administrative courts in order to protect the collective legitimate interests of certain communities or categories, regardless of an express provision providing standing.

1.4 Citizens and/or civil society’s intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

While private parties do not have standing to affirmatively bring criminal bribery and corruption claims, Italian law permits a victim to join criminal proceedings by bringing a concurrent civil action (*costituzione di parte civile*) alongside the criminal proceeding, so long as the victim has the capacity to sue (*capacità processuale*). The Public Prosecutor’s office retains the burden of proving that the defendant is guilty, but the civil party may play a pivotal part in the evidentiary process, especially with regard to evidence. A victim joining a criminal proceeding as a civil party can summon witnesses, experts, and advisers (so long as the civil action is joined within a specific deadline). At the end of the criminal proceedings, the criminal court will assess the injury and award damages, or merely make a

⁵ *I.e.*, those registered in the special list of associations representing users or consumers or in possession of the requisites identified by the case law.

finding that there is a right to damages and refer the parties to the civil courts in order to determine the amount owed.⁶

Prosecutors must also inform victims of the decision to dismiss the case for lack of sufficient evidence, and victims are entitled to file a brief in opposition to the presiding magistrate. A magistrate may then rule in favor of the victim and order the prosecution to conduct a further investigation or to file a formal accusation.⁷ The offender is also obliged to compensate the damage caused to the victim/injured party. A person who has committed an offence shall be liable to compensate the victim for any harm done to him as a result of their actions.⁸

Italy has specific rules allowing non-profit organizations and associations to intervene in criminal proceedings.⁹ However, these entities can intervene only as “offended parties” (and not as “injured parties”). This means that CSOs cannot join a criminal proceeding as civil parties and request the compensation of damages, but they can, however, collaborate in the proceeding and present evidence.

That said, the role of CSOs in criminal proceedings is subject of ongoing debate by Italian courts. Some Italian courts have consistently permitted such entities to intervene as civil parties in criminal proceedings, allowing them to request damages.¹⁰ However, in a recent decision,¹¹ an Italian court denied the participation as civil parties to several non-profit organizations and other entities (including labour unions) and outlined the main requirements that non-profit organizations and other entities must meet to join as civil parties in criminal proceedings:

- The organization has to be incorporated before the offence/crime;
- The purpose of the entity (obtainable from the Statute/Articles of Association) explicitly includes and covers the protection of an

⁶ Article 74 of the Italian Code of Criminal Procedure.

⁷ Article 408, 409 and 410 of the Italian Code of Criminal Procedure.

⁸ Article 185 of the Italian Criminal Code.

⁹ Article 91 of the Italian Code of Criminal Procedure.

¹⁰ Please see the following decisions: Supreme Court., United Section, April 24, 2014, n. 38343; Supreme Court, Section IV, April 27, 2015, n. 27162; Supreme Court, Section I, May 17, 2011, n. 29700; Tribunal of Milan, July 2, 2012.

¹¹ G.U.P. Milan, Ord. February 2, 2021

interest attributable to the legal asset damaged by the crime/offence;

- The purposes of the entity must not have remained “on paper,” but instead must have been translated into a concrete and continuous activity aimed at pursuing the intended purpose (this requirement is not satisfied by a mere activity of information and/or denunciation); and
- The entity must have an effective territorial link with the place where the protected interest was affected.

Note that Legislative Decree No. 231/2001¹² introduced criminal liability for corporations, including for bribery offences. Although technically considered administrative offences, such bribery charges are heard by criminal courts in accordance with the rules of criminal procedure. Whether Legislative Decree 231/2001 permits injured parties or CSOs to join proceedings as civil party and claim damages remains the subject of debate, as the lack of any reference to standing is viewed as a conscious legislative choice. In practice, however, this interpretation has limited effect because the victim and CSOs can still recover damages against the offender for the criminal offence as discussed above.

1.5 State’s entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

The Italian State can join criminal proceedings as a civil party,¹³ subject to the authorization of the President of the Council of Ministers (or the delegated undersecretary of State). Authorization is granted, subject to the opinion of the competent State Attorney’s Office, when public interests, patrimonial, and non-pecuniary interests of such importance as to make it appropriate for the State Attorney to support the action of the public prosecutor are relevant. The State Attorney will then represent the interests of the state administrations (separate and apart from the public prosecutor).

¹² See <https://www.gazzettaufficiale.it/eli/id/2001/06/19/001G0293/sq>

¹³ Article 1, paragraph 4, of the Law of 3 January 1991, n. 3, available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1991-01-03:3!vig>.

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

Foreign governments or foreign-based non-governmental institutions have legal standing to bring corruption cases on behalf of this country's citizens.

As long as they meet the general standing requirements for legal persons (see above), foreign states or institutions can have legal standing as a civil party in a criminal proceeding.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

There are no corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

We are not aware of legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field

3.2 Procedures for advancing class-actions

1. Parties claiming damages due to the violation of homogeneous individual rights are required to opt-in to participate in the class action;
2. A claim for violation of homogeneous individual rights may be filed by any member of the "class" (to which the owners of the homogeneous individual rights belong) and by non-profit organizations or associations

- that are registered with the Italian Ministry of Justice and whose objectives encompass the protection of homogeneous individual rights;
3. The class actions can be filed only against companies or entities in charge of the provision of public services or public utilities, implying that it is not possible to file a class action against a public administration; and
 4. Class actions must be filed exclusively before the specialized business division of the court where the defendant has its registered office.

However, courts will not hear cases where:

- The claim is clearly ungrounded (in such a case, the claimant may file a new class action if the circumstances change or when the claimant raises new reasons of fact or law);
- The court deems that the individual rights are not homogeneous;
- The claimant is in conflict of interests with the defendant; and
- The claimant appears not to be able to take care adequately of the homogeneous individual rights claimed.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

There is no specific definition of “victim of corruption” in the Italian legal system¹⁴. In general terms, the “victim/offended party” is defined as the holder of the interest that is sought to be protected by the law, and is distinguished from an “injured party,” who suffers harm as a result of the commission of the crime. Although the two categories will often overlap, the distinction is important as the different notions lead to different rights – only an “injured party” may bring a civil

¹⁴ Note that Law 190/2012, relating to corruption, distinguishes between (i) corruption, (ii) undue inducement to give or promise benefits and (iii) extortion. The term “victim of corruption” is used by Italian scholars to refer only to extortion crimes, which are configured as acts of prevarication by the public official to obtain an undue advantage over another person, who therefore assumes the quality of victim (i.e. person offended by the crime). The same cannot apply to corruption cases *stricto sensu*, as they consider that there is no victim in this type of crime.

claim against the accused within the criminal proceedings, while the “victim” enjoys certain active and other rights.

4.2 Cases that recognize the role of victims

There are no cases that recognize the role of victims.

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

There are no corruption-related cases that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

There are no innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

There is information published by enforcement authorities. Type of information:

- The enactment of sanctions
- The grounds for sanctioning or acquitting (the case)

5.2 Feasible access to information on ongoing or concluded cases

According to Article 116 of the Italian Code of Criminal Procedure, only a person subject to investigations or the defendant can request access to the documents and information relating to ongoing proceedings. Information relating to pending criminal proceedings cannot be provided to those who are not involved in the criminal proceeding itself, given the secrecy and privacy protection regime that characterizes this phase. However, information and copies of documents can be provided to citizens who are not part of the trial only if they can demonstrate that they have a specific interest, following the authorization of the judge in charge of the proceedings. For example, a copy of a sentence may be issued for study and consultation purposes.

With respect to concluded cases, all the sentences issued by the Supreme Court are published on the website of the Italian Supreme Court with the complete details of the parties concerned by the judgment.¹⁵

In the criminal field, the hearings (except for special cases) are public, but the final judgment itself is not public and cannot be made available.

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

The Italian Transparency Code (Legislative Decree 33/2013), implementing the provisions of Italian anti-corruption law (Law N. 190/2012), has introduced several provisions on disclosure, transparency, and dissemination of information by public entities. The instruments for citizens' access to information and data held by public offices have also been strengthened with the introduction of (i) civic access to documents which are required to be published by public authorities and (ii) free access (FOIA).

In particular, the Freedom of Information Act has been implemented with Legislative Decree 97/2016. Every citizen can submit a request under FOIA, without the need to prove a specific reason or interest. However, a generic FOIA request will most likely be rejected and, for this reason, it is important to identify

¹⁵ See https://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page.

the documentation for which access is requested. Once submitted, the public administration has 30 days to reply (either accepting the request or rejecting it). In the event that the public administration does not respond within 30 days, rejects or partially accepts the request, it is possible to submit a request for review to the Head of Corruption Prevention and Transparency, who will decide with a motivated decision within 20 days. In the case of regional administrations or local authorities, it is possible to appeal to the Ombudsman competent for the territorial area where established. Finally, the first instance decision or the one issued during the review can be challenged before the Regional Administrative Court.

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

See above.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

N/A