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A) THE NEW LAW ON COLLABORATIVE WITNESS AND JUSTICE WITNESSES

Introduction

The standard regulation of protection and assistance for those who collaborate with the law represent, undoubtedly, one of the most innovative and effective means that the legislator has made available to the judiciary and the police force in the fight against terrorism and organized crime.
In fact, the need to face the complex problems relating to the provision of protection and assistance for those who collaborate with justice and their next of kin arose from a different Institutional attitude towards the phenomenon of 'criminal turning State's evidence'.
The late 70s and the 80s were marked by an ever-growing number of laws which, in order to fight against the devastating phenomenon of terrorism, granted particular sentence reductions and other court and correctional institution benefits to those defendants charged with committing crimes of terrorism or subversion of the constitutional order who withdrew from the organized crime or who collaborated with justice.
Law n. 486, already in 1988, had entrusted to an extraordinary and temporary position, the Anti-racketeering High Commissioner, the task of taking all necessary measures, or having them taken, in ensuring safety of the persons running serious danger because of their providing collaboration within investigations or proceedings pertaining to criminal racketeering activities.
Yet it is only with law March 15, 1991 n. 82 that a legislative system , undoubtedly characterized by criteria of completeness and functionality, was set up which nevertheless quickly presented considerable drawbacks from which the reform initiatives took rise.
On February 13, 2001 after four years of troubled parliamentary course, Law n. 45 came into force and reformed the former legislation.
The former system in force was founded on essentially three kinds of interventions: measures of protection and assistance to be performed during the collaboration, correctional institution advantages enjoyable in the enforcement of sentence stage and criminal allowances represented by a special sentence reduction obtainable for those who strove to prevent the carrying on of crime and provided conclusive evidence for the reconstruction of facts and the finding or the arrest of the offenders.
The main changes established by the reform lie in the diversification of the applicable safety measures for the collaborative witnesses – graded with reference to exposure to danger – in the breaking away of the criminal profile from individual safety issues, in the distinction between collaborative witnesses in a narrow sense and justice witnesses.
The new law provides for application of special measures of protection when the following conditions occur:
a) the ordinary precautionary measures directly taken by police authorities (if the person is free) or by correctional institution (if detained) are inadequate;
b) the collaborative witness is in serious and present danger because of his/her collaboration;
c) the collaboration is given, within criminal proceedings, as to crimes committed for the purpose of either terrorism or subversion of constitutional order or even racketeering;
d) the collaboration and the disclosures are intrinsically reliable; they have additional completeness features or anyhow appear of noteworthy importance for the development of the inquiries (or investigations of utmost significance) or for proceeding purposes.

A similar order of requirements flees from any fear of excessive selectivity in the presuppositions of access to collaboration. Indeed, the law establishes only that it is sufficient a reliable content and, jointly or alternately, new, complete or of noteworthy investigative or procedural importance.
Hence, even statements on facts of small investigative importance, provided they are new and complete, would legitimate access to special measures, as would also merely confirmatory disclosures of confessions given by others as long as complete or pertaining to important facts or even disjointed and partial statements on the condition that they are new and of significant interest.
Should the special measures of protection not result adequate to the seriousness and relevance of danger, the law foresees the possibility of defining a special protection program that provides even more drastic interventions of protection and an economic assistance commitment from the State for the entire program.
The lawgiver, in order to establish which cases apply for the special program, has relied on the 'inadequacy' of the special measures of protection compared with the 'seriousness and relevance of danger'; the latter a requirement that de facto does not narrow the range of application of special measures since it is so hard to claim that the dangers caused by collaboration are not enough to merit a form of special protection.
The law lays down that 'in the determination of dangerous situations not only are the importance of the handling of the collaboration or significance and quality of the disclosures taken into account, but also the consequences of the criminal group reactions relative to the collaboration and disclosures with specific reference to the force of intimidation that the criminal group is able to make use of in that place'.
These terms refer to different aspects in the judgement of collaboration.
The 'importance' is evaluated by the collaborative witness' position held inside the racket before opting out and by the fullness of details that the collaborative witness is able to disclose.
The 'significance' is only important for the court with reference to the weight of the disclosures on the investigation and the execution of the proceeding.
The 'quality' relates to the intrinsic value of the disclosures, to the completeness, to the coherence and to the exactness of the reported data.

Witnesses

A different treatment is given by the law to those who, until collaborative witnesses, coming from the criminal world, turn out 'to have no part in organized crime and who are the victims of crime, witness or person informed about the facts'.
Regarding the requirements enabling special provisions for witnesses and holding good that inadequacy of ordinary instruments is a requirement for the provision enforceability, the law states that disclosures need not be new, complete or extremely important as foreseen for collaborative witnesses but only reliable.
The measures may also be ordered when the subject-matter of the disclosures is a crime different from racketeering, terrorism and subversion.
The intervention in favor of persons at issue takes into consideration problems relating to relocation, reinstatement, economic matter and effectiveness of the program.
Witnesses who are eligible for the special protection program are entitled to:
a) measures of protection until effective termination of danger;
b) measures of assistance, even after the protection ends, in order to guarantee a standard of personal and family living no lower than before the start of the program, until the witnesses are able to enjoy from their own income;
c) capitalization of assistance, in alternative to the same;
d) if civil servants, the keeping of their jobs on paid leave of absence awaiting definitive relocation even at another State Administration;
e) the payment of a lump sum for loss of income ensuing from own work termination and those of family members;
f) loan concessions specifically designed for the complete relocation/reinstatement of the witness and the members of the family in the economic and social life.
If the special program of protection includes the definitive relocation, the witness has the right to have his property acquired by the State against payment of the equivalent in money at market price.
All safety and assisting measures provide for the benefit of witnesses shall continue, independently from criminal proceeding situation in which deposition was given, until the discontinuance of danger for the witness and members of the family.
Special measures of protection are put into effect, if necessary, also for live-in partners as well as for whoever runs serious, existing and well-founded danger because of relations with the same persons.
The attitude of all these forms of intervention must not be intended as a choice of criminal policy consisting of encouraging testimony through measures of protection.
A similar setting would indeed be reprehensible since on the one hand it would have the effect of generating in the citizens the conviction that complying with the civic duty of testimony involves exposure to risk and on the other hand, as a result, there is a considerable burden at the State's expense compared with the limited

court contribution that can be given by the witness. Hence, it could not be seen as a means of fight against crime.
Witness protection, thus, must not be a choice of criminal policy but must be the response to a duty of solidarity.
It has to be held up differently with regards to collaborative witnesses as the incentive policy is justified for the important effects that come out. Collaboration causes tears within organized crime groups weakening the prestige and credibility and it enables to gather a great amount of information on crimes and broadens the investigations to a great number of persons.

The procedure for admission to measures

The power of initiative for adoption of measures is given to the Public Prosecutor but the law also provides for autonomous power to the Police superintendent upon Prosecutor's acquisition.
The competent body for adoption of measures is the 'Head Commission for the definition and application of special measures of protection'.
This commission has very broad investigating power which enables it to acquire knowledge not only limited and restricted to the authorities' allegations who formulate the request.
The stay of execution of provisions in application of measures is inadmissible in order to avoid, by means of precautionary instrument, the delay for years of effectiveness of the measures until the settlement of the administration action.
The power of precautionary intervention of the administrative judge is limited only to the revocation or modification of the measures.
The law provides for cases of revocation and modification of program by the Commission.
The provision creates a sort of 'legislative shield' that allows reviewing hte order both relating to changing situations of danger and all cases in which incompatible situations occur with the commitments made at the signing of the program.
For revocation purposes, a policy of conduct is foreseen, such as the perpetration of a crime in that it is a sign of the person's return to the criminal circuit, or even the refusal to accept adequate job offers or any action that involves disclosure of identity, residence and any other applied measures.
The term is indicated in the same provision for admission to the measure, which shall be from six months up to five years, and by which time the case must be reviewed.

Collaborative witness' commitments

Protective measures adopted by the Committee (either special provisions or extraordinary program) imply the establishment of a complex relationship between the State and collaborative witness, with the assumption of mutual obligations.
Therefore, special measures are provided for by the law to be undersigned by the interested parties who undertake the fulfillment of such obligations.
Amongst these, great emphasis needs to be placed on the duty of secrecy, consisting in the prohibition to issue statements about events somehow concerning the proceedings in connection to which the informative testimony was borne to people other than judicial authorities, police forces and the specific counsel for the defence.
To further specification, a general ban for the collaborative witness to meet and get in touch, by any means or intermediary, with any person given over to crime or other collaborative witnesses is provided for. The recurring frequency of multiple collaborative witness cases within the same family circle has caused the introduction of a mitigation to such last principle, providing for a possible measure by judicial authorities to give lease to meet other collaborative witnesses if any serious family life necessity occurs. Such provision applies to both collaborative witnesses in a strict sense and witnesses in a broad one.
Amongst the commitments undertaken with the informative testimony, a novelty, exclusively intended for collaborative witnesses, is the obligation to itemize in detail all properties possessed or controlled directly or by means of a nominee and, immediately after the admission of special provisions, to transfer all money and assets resulting from or being the reinvestment of illicit profits.
The obligation to undergo interrogations, examinations and any other act of investigations, including drawing up the informative testimony explanatory minutes, is confirmed.
Furthermore, according to the new regulation, the person who has expressed the will to act as collaborative witness shall deliver to the Public Prosecutor, within a hundred eighty days from the statement of the said will, all information in his possession in order to reconstruct the facts about which he is being questioned and any other serious fact of social alarm he might know about; as well as any news useful to the perpetrator's arrest and the information required for the location, distress and seizure of assets directly or indirectly available to either the collaborative witness himself or other members of criminal groups (provision regarding only collaborative witnesses in a strict sense).

Issued statements are reported in a record called 'minutes illustrating the contents of informative testimony'. The aim of 'setting up boundaries' to the collaborative witness and of eliminating the danger of 'installment' statements has thus been reached.

Typology of benefits

Protective measures are distinguished and graded according to the collaborative witness's risk-exposure degree. In cases of minor danger either the Prefect and the High Police Official for free people or the Department of Penitentiary Administration for people held in custody can adopt ordinary protective measures mainly consisting in the arrangement of supervision shifts by public security to protect the collaborative witness and his family.
There follows "special protective measures", falling within the competence of the Central Committee, that consist in specialized and medium-level protective interventions whose specific contents are submitted to the discipline of appropriate decrees by the Ministry of the Interior. These may be precautionary technical stratagems, the adoption of measures necessary to move the informative witness under protection to a town other than the place of residence, the provision of interventions aimed at facilitating his social reinstatement, of particular custody, imprisonment and guarding procedures.
The highest level of protection and supervision is represented by the definition of a "special program" reserved to those cases where special measures are inadequate to the serious and current danger that witnesses and collaborative witnesses go through.
Amongst radical provisions, the transfer of people in custody to safe places, special procedures of keeping documents, measures of economic and personal assistance, change of personal identity, steps aiming at fostering protected people's social reintegration are provided for.
Economic provisions only reserved to informative witnesses entitled to the program are assigned exclusively in the event that the person cannot see to it personally. Besides, job preservation is assured. The possibility of issuing cover-up papers is provided for as well. In case of detained people, the Department of penitentiary administration looks after their assignment to penitentiaries or sections of a penitentiary that guarantee the specific protection requirements.
As far as criminal and trial benefits are concerned, there are rules regulating the amendments to the condition of precautionary detention and those regarding the application of a special reduction of sentence foe offences linked to the racket and to terrorism. The basic principle is that precautionary custody is not cancelled through the effect of the informative testimony only. Yet, the repeal or substitution of the applied precautionary measure prior to the Anti-racketeering National Prosecutor's ruling is possible as long as the informative witness has been proven to have complied with his commitments and that there are no elements from which an informative witness's current connection to felonious organizations are inferred.
As for extenuating circumstances in compliance with the penal code and special laws, the legislator has provided for them to be applied only to those who have undersigned, within the prescribed terms, the informative testimony explanatory minutes.
The special sentence reductions provided for in laws n.625 of 1979, 304/1982 and n.34 of 1987 shall be applied in particular for those who have kept conducts of collaboration concerning crimes committed for the purpose of terrorism.
With regard to correctional institution benefits – probation, good-conduct-bonus permits and house arrest – their grant is possible notwithstanding ordinary provisions in force, regarding the limits of penalty as well, to those collaborative witnesses who deserve being granted special extenuating circumstances provided that they have already served a quarter of the sentence or a ten-year incarceration in the event of a sentence of life imprisonment.
Furthermore, there is the possibility of obtaining the benefits also for previous sentences and, thus, for events other than those with reference to which the informative testimony has been borne, on condition that a first-instance judgement has been at least delivered concerning the facts subject of the informative testimony where notice of the intrinsic reliability, novelty or completeness of statements is given.
It will be the duty of the supervising judge to evaluate the convict's behaviour and danger to society considering what comes out from the Anti-Mafia National Prosecutor's proposal or ruling.

Conclusions

With the resolution of 20th December, 1996, the European Union had invited the member States to adopt adequate measures to encourage those taking part to a criminal association to become informative witnesses pointing out also the necessity to distinguish protection and assistance to witnesses.

Law n. 45 of 2001 puts fully into effect the idea of strengthening, following the double-binary strategy, witnesses' protection and to prevent an accused-informative witnesses' commingling also from the organizing point of view.
Following a decrease in the quantity of cases to be dealt with, hopefully the protective central Service will be able to improve and develop the quality of professional protections, allowing the protection system to take off in Italy and setting, above all, an example and reference for the rest of European countries.

B) THE VICTIM PROTECTION

The Italian legislation on protection of crime victims is still to be considered as generally fragmentary.
Given this fragmentary pattern art. 23, §3, Const. -regarding the defendant as the prime actor in the criminal proceeding and the victim as a mere holder of economic interests relating the compensation damages ensuing from the crime- sets forth a fundamental suggestion to the legislator.
Over time this perspective has led the legislator to equate the concept of crime victim with that of injured party affected in an economic interest or otherwise harmed in a way suitable for economic damage assessment.
Additionally, the equation above has caused a further misled approach in that the injured party's standing in the criminal proceeding is viewed as an instrument apt to substitute for appropriate compensation for serious damage to the juridical position of the victim under all circumstances.
Thus, on the one end the trial procedural protection for the victim in their capacity as civil claimants has been seen to get broader. Conversely, there has been an erosion of the trial procedural protection for the crime victim as mere holder of moral interest in the punishment of the guilty. Substantial protection/effective compensation for the victim has equally worn down: in fact –having suffered material harm from the crime- they could not benefit from their standing as civil claimants in the criminal proceeding since the regular damage compensation patterns under arts. 2043 and 2059 cc would not secure substantial protection/effective compensation to them..
This dissertation intends to exhaustively illustrate the various issues that –however different- share the attempt to supersede the equation victim/civil claimant that might no longer warrant appropriate protection for the crime victim.

1. The Trial Procedural Protection for the Victim as Holder of Moral Interest in the Punishment of the Guilty

In a *de iure condendo* light the framework of the Italian Legal System hardly ever granting relevance to the victim's role in the criminal proceeding could long be debated.
In fact legislation policy patterns entrusting victim protection to the public prosecutor enhance the emerging tenet of depersonalization of penal law under which –in principle and exceptions apart- solely the State can prosecute crimes since:
a. the feud-oriented criterion for the assessment of the damage to the personal juridical property is to be considered obsolete and unacceptable in modern society;
b. certain crimes typical of modern States –the so-called "crimes with no victims- in which the injured party is not a person, would be difficult to prosecute on a private basis;
c. the investigative and jurisdictional apparatuses are managed by the State from which it ensues– as a syllogism- that the accusatorial system should be similarly organized;
d. finally it is to be considered unacceptable that protection against crime depend on the then-victim to act or initiate the criminal proceeding on account of the fact that -the juridical right/property subject to criminal law protection once individuated- the crime affects the whole of society, beyond the natural or legal person concretely damaged.
e. The crime prosecution is viewed by the legislator as an activity carried out in the interest of the State.

On these premises, it is self-evident from just an overview of the different trying apparatuses that the crime victim has hardly ever access to criminal proceeding.
Taking a specific, the victim is not entitled to oppose the defendant's access to the so called plea bargaining sentence under art. 444 c.p.p.
Art. 572 c.p.p. should also be considered that provides for the injured party to have the mere faculty to submit a well-grounded request to the public prosecutor to oppose any penal effect against the first instance sentence.

It is a mere option only binding the public prosecutor insofar it brings forward a well-founded motivation in support of the rebuttal of the first instance sentence.
Yet, -still in a *de iure condendo* perspective- as no juridical principle seems to substantiate a system under which the trying procedure relevance granted to the victim is so scarce, an analysis can be attempted of the options the legislator can choose from to strengthen the victim's capacity to participate in the criminal proceeding as claimant, thus enhancing their protection.
First of all the most important trying patterns are brought to mind: the penal mediation between victim and offender and the penal action against the offender on the victims' initiative.
The first option has been incorporated intoto the 274/2000 decree on the penal jurisdiction of the mediator or justice of the peace –*giudice di pace*- charting the path to the experiment of penal mediation for adults in Italy as well.
Art 29, § 4 of the decree provides for the judge to have the faculty to suspend the criminal proceeding and delegate the mediation phase to a mediation center based in the territory.
This mediation takes place between victim and offender: the two parties can discuss the problems arising from the crime perpetration and work out a solution with the assistance of a third neutral party. This mediation between offender and victim introduces a major change in the criminal proceeding reintegrating the parties' capacity to discuss the crime event and its outcomes and enabling them to figure out appropriate compensation modes.
Irrespective of the effects –at least envisaged- of the fact of making the offender assume responsibility and of the deflation of the judicial caseload, this approach is expected to achieve a major result: the victim's satisfaction, to be also intended as the moral satisfaction to get the offender to repent.
The second option the legislator could select –equally provided for under 274/2000 decree- is to make the victim play a more decisive role in the contest/cross-examination phase of the criminal proceeding. In fact not only is the victim enabled to file a charge against the offender but also to initiate private prosecution and take part in the contest/cross examination with the offender as it happens in civil litigation cases.
Art. 21 provides for the crime victim to be allowed to resort to the mediator for crimes within the mediator's jurisdiction and listed in the decree, and for crimes to be prosecuted on a charge filed by the victim/private party.
Obviously, -as clearly specified under § 5- an appeal against the sentence has the same effect of a charge being filed and is thus incompatible with the charge itself: if the injured party has already filed a charge for the same crime event this is to be specified in the appeal file and copy of the charge file is to be attached to the appeal file while a second copy of the charge file is to be left with the public prosecutor's office.
Under art. 25 within 10 days from the appeal submission the public prosecutor must communicate their request to the judge's chancery -thus confirming or amending the complaint made in the appeal file; otherwise the public prosecutor must notify their disallowance of the appeal in case they deem it unacceptable or not well-grounded.
As indicated by the legislator, the trial before the mediator seems to share the civil lawapproach -possibly leading to private prosecution trying modes.
However these private prosecution trying modes are likely to be applied only to minor crimes.
The latter could as well comprise crimes to be prosecuted on a charge filed by a private party.
In fact since the victim has the faculty to decide whether to initiate prosecution against the offender there is no juridical principle preventing them from standing in the criminal proceeding against the offender.
Within the crimes to be prosecuted on a charge filed by a party however it is advisable to single out crimes fulfilling a second requirement: minimum investigative and pre-trial activities to be conducted during the proceedings as several legislation policy principles lead to foster public prosecution. In fact public prosecutors would be better positioned to access evidence since they can make use of the judiciary police.
Yet a fundamental issue stay un-addressed: how to make the victim participate more actively in the criminal proceeding –regardless of the crime at stake- and how to strengthen the victim's capacity to back up public prosecution.
Recently some improvements have been made to effectuate – if nothing else- the victim actual participation in the criminal proceeding: the victim is not entrusted with any power but can better interact with the judge and the public prosecutor.
In fact law no. 397/2000 grants the defense attorney the right to conduct their own investigations.
This right of the defense attorney to carry out investigations is ruled under art. 327-*bis* and is to be intended as a right of private parties' attorneys in general, and as such it is entrusted to the injured party's attorney as well and not exclusively to the suspect's or defendant's attorney.
However a concrete change in the contribution of the victim to the proceedings is deemed to be unlikely as long as the victim will be merely allowed to indicate pieces of evidence and their own deductions to the judge or the public prosecutor –as under art. 90 c.p.p.
Yet this problem could be effectively addressed by allowing the victim to submit at least a witness list as provided for under art. 468 c.p.p.

Some proposals have recently been set forth by the Italian Committee on the Problems and Support to the Crime Victims –*Commissione di studio sui problemi e sul sostegno delle vittime dei reati*- appointed by inter-ministerial decree of 7/1 2002.
The reform draft issued by the Committee envisages a set of harmonized amendments to the Penal Procedure Code in order to enable the victims to effectively safeguard their rights irrespective of their standing as civil claimants in the criminal proceeding.
The improvements above foresee free legal assistance under art. 1 § 1, law no. 217/90 (free legal assistance is already granted to the injured party or to the damaged person who intends to act in the criminal proceeding to recover damages). The access to free legal assistance removes the economic hindrance that otherwise would cause the victim's participation in the criminal proceeding –irrespective of their acting to recover damages- to remain a mere principle -if noble.
Another proposal suggests that in case preemptive custody is no longer required the judge notify the crime victim as well of the release order concerning the person investigated or the defendant –thus enabling the crime victim to apply for protection.
Furthermore, it is also envisaged to allow the victims to resort directly to the preliminary investigation judge –*GIP*- for a special evidence-based hearing –*incidente probatorio*- skipping the two-phase procedure (from the victim to the public prosecutor and from the latter to the preliminary investigation judge).

2. The Substantial Protection/Effective Compensation of the Victim as Holder of Material Interests Deriving from the Crime Consummation

Victim protection can also be regarded as comprising the whole of the legislator's activity that addresses the recovery of the damages deriving from the crime and affecting the juridical position of the victim, whenever the mere procedural instrument allowing the victim to stand as civil claimant is deemed not to be fit to protect them.
As envisaged by the legislator in a classic interpretation, the introduction of the faculty for the claimant to act in the proceeding to recover damages should have sheltered the victim from any economic damage or any harm suitable for economic damage assessment.
Trying practice has unfortunately proven that the claimant's standing in the criminal proceeding leaves un-addressed several issues relating substantial protection/effective compensation for the victim- *inter alia* when the harm is so considerable that incorporating in the sentence a civil conviction charge -such as the obligation for the offender to pay the damages- would be useless in case the offender has no property.
To this extent and more, the legislator has put into action a set of instruments aimed at warranting substantial protection/effective compensation via the possibility to bestow special privileges on certain victim categories (the so called "reinforced protection victims") in case of crimes such as:
1. crimes perpetrated for terrorism and democratic order subversion purposes and to pursue the aims of the associations indicated under art. 416/*bis* c.p. making the victim sustain wounds or personal lesions of permanent nature;
2. crimes committed to make the victims adhere to extortion requests and affecting their real and personal property, personal lesions or economic damage to be also intended as loss of earnings relating their jobs/businesses;
3. crimes under arts. 3, laws no. 75/58 and 380 c.p.p. when committed through violence or grave exploitation of foreign citizens;
4. crimes against next of kin.

1. Starting from the first crime typology, law 302/90 provides for the victims of crime committed for the purposes illustrated above to be warranted specially granted aid on their request (and in case of death of the victim on the next of kin's request -included persons living with and supported by the deceased person and cohabitating partners): an approach that aims to materially compensate the victim for biological damage and work capacity reduction – as a consequence of the injuries or permanent lesions due to the crime.
Additionally law no. 512/99 has created the Solidarity Fund in Support of the Victims of Mafia-related Crimes –*Fondo di rotazione per la solidarietà alle vittime dei reati di tipo mafioso*- providing for mafia-related crime victims to receive compensation not only for biological damage and work capacity reduction but also for harm generally referred to as "property damage".
However it is to be noted that a similar Solidarity Fund for terror and democratic order subversion-related crimes does not exist: a deficiency that is advisable be remedied without delay by the legislator, especially in the present scenario recording a surge of internal terrorism and the new crime typology of "international terrorism", recently ruled under art. 270/*ter* c.p.
Nevertheless the laws above illustrated do not foresee any specially-devised substantial protection/effective compensation during the criminal proceedings since they are mainly applied at administrative level.

2. It is interesting to note -in terms of the judicial authority's role in the implementation of protective measures- the provision framework issued by the legislator since 1991 and culminating in law no. 44/99 geared to protect extortion victims.
The most important provisions in the matter are worth considering.
First of all law no. 44/99 combines the two previously created Funds into a joint Solidarity Fund for extortion and usury victims (in fact law no. 172/92 created a Fund in support of extortion victims whereas law no. 108/96 instituted the Solidarity Fund for usury victims).
As provided for under art. 3 at present the typology of refundable damage is broader.
It takes into account not only property damage but also harm to the person as well as pressure due to the social and cultural milieu and intimidation-related damage: thus the damage sustained can go beyond specific crime events to concern also loss of earnings such as in the case of loss of contracts with third parties or the opposing party on account of the chilling effect of the criminal organization's activity.
Under art. 4 the special protection program can be accessed only by victims who have reported all the details to their knowledge relating the extortion requests they have received -provided they have not aided and abetted the crime event and/or are not subject to any prevention measure or to the related application measure provided for under laws no. 1423/56 and no. 575/65. However an exception can be made in case these extortion and usury victims have significantly contributed to the judicial authority's activity during the investigations.
Another exception is also made in favor of those that having initially adhered to the criminal organizations' request decide to collaborate with the investigation authorities.
In case of victim's collaboration -given the high risk of retaliation against them- the public prosecutor can resort to a decree provided for under art. 13 § 2 of the above mentioned law ordering the temporary omission of the name and address of the person reporting the offense from the files kept in compliance with arts. 408 § 1 and 416 § 2 c.p.p. until the conclusion of the proceeding or until the proceeding initiating the prosecution phase/criminal proceeding.
Obviously, in case of initiation of the prosecution phase/criminal proceeding, the victim's protection needs should be superseded by the more important right of the offender to defense during the criminal process, thence the name and address of the offender will be again made available (*rectius*: they will be again at the disposal of the parties involved, among which the defendant).
Of course this provision does not take into account the fact that the name and address of the claimant could be disclosed to the investigated person on receipt of the notification of the preliminary investigations' conclusion under art. 415-*bis* c.p.p. In fact the obligatory character of the above mentioned notification has been incorporated intoto the Penal Code after the issuing of law no. 44/99.
However, even with reserves towards a trying system that in the literal interpretation of the provision does not entitle the investigated person to have full access to the public prosecutor's file before a possible committal-for-trial request by the prosecutor, the above illustrated regulation is to be regarded as a *lex specialis*. In fact –unlikely the regular provisions in the matter- it covers a special crime category and espouses the noble principle to postpone as long as possible the disclosure of the claimant's name and address to the alleged offender in order to protect the claimant.
On the other end this measure will not prevent the defendant from defending themselves effectively during the criminal proceeding.
The public prosecutor will play a decisive role in the victim protection also relating the concession of provisional compensation on the total amount of damages the victim is entitled to.
This capacity regards the public prosecutor's advisory function towards the opposing party as provided for under art. 17 §4 of the above mentioned law during the preliminary investigations.
In fact, in case the victim asks for this provisional compensation the public prosecutor will be required to give their advice on the grounds for its concession: namely the public prosecutor will have to ascertain whether the person requiring provisional compensation is actually entitled to the status of injured party.
Obviously the public prosecutor's opinion will not be binding as in this just-started phase of the criminal proceeding the injured party status could not be defined precisely. The request for an assessment of the existence of an injured party status merely constitutes the spirit of the question put on record: however it will affect the following deliberation of the Solidarity Fund Management Committee – *Comitato di gestione del fondo di solidarietà*- under art. 19.
Furthermore the public prosecutor will have the faculty to leave the request for advice un-addressed or refuse to express their opinion insofar its disclosure hinders the secrecy of the investigations. In that case the administrative procedure for the provisional compensation concession will take its course anyway.

Additionally, in case it is deemed necessary to ascertain the grounds and the terms for the provisional compensation concession, art. 17 § 4 provides for the opposing party to have the faculty to request at all times the judicial authority involved to provide copies of the proceedings (and of written information on their content) relating the offense sustained by the victim. However the judicial authority is entitled to reject -

through a motivated decree- the opposing party's request on the grounds that it is incompatible with the preliminary investigations' secrecy or not relevant since the proceedings or the information so acquired would be of no use in view of the provisional compensation concession.
Anyway, in case the injured party is victim of a usury crime (not necessarily committed in an extortion-related manner) art. 14, no. law 108/96 provides for the Solidarity Fund to allocate a loan without interest in favor of the victim and on their request, only after the order instigating the trial of the offender.
Even before this watershed phase provisional compensation up to 50% of the final compensation could be granted on the claimant's demand subject to favorable opinion of the public prosecutor.
Art. 18, Law no. 108/96 provides for a further instrument in defense of the usury crime victims: it consists in the suspension of the publication or in the cancellation of the debtor's protest if the latter is a usury crime victim and on submission of a negotiable instrument –check or other- in payment –by the debtor charged with the protest themselves or through a third party.
This provision will be issued by the tribunal president, with non-appealable order, but only after the committal for trial of the defendant charged with protest, due to the necessity to verify the grounds of the crime event the defendant is charged with.

3. The third type of protection is ruled under art. 18, decree-law no. 286/98, providing for the concession of a special residence visa for social protection reasons to foreign citizens victims of abuse or grave exploitation, endangered by the statements made during the preliminary investigations, the criminal proceeding or in the attempt to get out of a criminal organization specialized in the crime under art. 3, law no. 75/58 ("prostitution exploitation") and in the crimes under art. 380 c.p.p. –among which it is worth noting the crime under art. 600 c.p. -"slavery condition"-.
The proposal for the concession of the above mentioned residence visa can be submitted to the police chief –*questore*- by the public prosecutor tasked to prosecute the criminal organization *de qua* or by the public welfare services whose assistance has uncovered the situation of abuse against the foreign citizen. In the latter case, however, the police chief must seek the public prosecutor's advice.
As provided for under art 18 § 2 the public prosecutor -in turn- making a direct proposal or giving positive opinion will notify the police chief of the evidence proving the abuse and exploitation conditions, the level of danger the foreign citizen is concretely exposed to and the contribution given by the foreign citizen to defeat the criminal organization and apprehend those who have committed the crimes related to the fulfillment of the criminal organization's purposes.
Yet, unlikely what is foreseen for the extortion crime victim who must always collaborate with the justice to access the protection program granted by the State, the regulation on the residence visa concession does not seem to provide for a similar collaboration in case the victim is a foreign citizen. In fact the danger the foreign citizen can be exposed to can also be due to the victim's mere attempt to get out of the criminal organization.
This interpretation is also supported by the wording of the article providing for the issue of a residence visa to the foreign citizen for "reason of social protection" and not as an award in acknowledgement of whatever collaboration with the judicial authority.

4. The forth protection type -the most recent- is ruled under law no. 154/2001 enabling the criminal process judge to enforce both personal and property-related precautionary measures against the defendant guilty of crimes against one or more of the cohabitating next of kin.
Art. 282-*bis* c.p.p. incorporated into the Penal Code by the above mentioned law foresees that the judge could order that–on the public prosecutor's request- the defendant (or the investigated person) be: a. immediately removed from the household, b. forbidden to access certain places habitually frequented by the injured party insofar it is necessary for the safety of the injured party or the security of their next of kin; c. ordered –with immediate enforcement-to pay the alimony in the form of a time-to-time check to the cohabitating partner/next of kin if the precautionary measures the defendant/investigated person is subject to deprives them of supporting means.
Additionally paragraph 6 of the same article provides for the precautionary measures illustrated in items a. and b. to be enforced also behind the minimum sentence term provided for instead under art. 280 c.p.p. (sentence term superior to a maximum of three years as a *condicio sine qua non* for the enforcement of a precautionary measure): this applies to defendants charged with the crimes under arts.570, 571 and 600-*bis* c.p., committed against the next of kin, such as the "infringement of the obligation to family assistance", "abuse of corrective and disciplinary means" and "prostitution of minors".
It is to be noted that this instrument could represent a valid alternative to the removal of the minor ordered by the Juvenile Court – *Tribunale dei Minori*.
In fact if in the course of the investigations an improper conduct situation culminating in a crime against a minor has been ascertained two alternative measures could be enforced: either the removal of the minor on the juvenile judge's request or the eviction of the defendant on the penal judge's initiative. However in case of high risk that the defendant could target the other next of kin of the minor so removed the eviction of the

defendant from the household would be more effective and it could support the measure already enforced in favor of the minor.
However the functioning of the above illustrated approach presupposes a coordination system between the Juvenile Court and the Italian *Procura della Repubblica*, to date an issue still to be addressed by the legislator: the prompt creation of this coordination system is strongly recommended.

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