

# VOCIARE

ITALY

## NATIONAL REPORT



### Victims of Crime Implementation Analysis of Rights in Europe



VOCIARE  
Victims of Crime  
Implementation Analysis  
of Rights in Europe

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## AUTHORS

MAURO BARDI (LAWYER AND LEGAL ADVISER)

GIOVANNI GALVANI (SOCIOLOGIST AND SOCIAL RESEARCHER)

### DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission.

Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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## EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. This implementation has proved to be complex and challenging. Hence, the present national report aims to assess the practical implementation of the Victims' Directive in Italy.

In summary, the main results that emerged from the research are the following:

- a) The Italian State, with Legislative Decree 212/2015, has only partially implemented the European Directive 29/2012, there are no provisions regarding extrajudicial protection for victims;
- b) There are some delays and difficulties to enforce certain rights recognized by Legislative Decree 212/2015 to the victim. In particular, these difficulties have emerged with reference to the information and communications to which the victim is entitled;
- c) The figure introduced by the D.Lsg. 212/2015, art. 90 quater - that is, the figure of the particularly vulnerable victim - does not fully respond to protection needs;
- d) The D.Lsg. 212/2015 does not include provisions concerning the establishment and regulation of victim assistance centers.

Later various information will be provided in an analytical and detailed manner. Here we provide a summary assessment of the implementation in Italy of the contents brought by the European Directive n. 29/2012.

The evaluation method used necessarily passes through two profiles:

- a) a formal profile based on the examination of the Italian law (Legislative Decree 212/2015) that has implemented the Directive.

On the basis of this point of view, it can be said that the Italian law has only partially accepted the principles and recommendations contained in the Directive, and that those indications and provisions concerning the opening and management of the centers for assistance to victims;

b) a profile of a substantial nature, on the basis of which we can affirm that the Italian landscape is characterized, in general, by a certain slowness in adapting the judicial and reception structures to the needs of the victims; but it is also characterized by not negligible examples of good practices and spontaneous initiatives on the part of some offices of power of attorney and of private and voluntary bodies.

As will be discussed later, it can be said that the main gaps in the implementation of the Directive in Italy are to be found in formal and regulatory deficiencies and organizational deficiencies compared to the centers of assistance to victims on the territory.

The most interesting and stimulating challenges come from the new Association for Assistance to Victims of Crime. It is an association in which various subjects (mainly private, but also supported and supported by some local public subjects) participate, actively involved in following and supporting victims of crime on the basis of the provisions of the Directive and of raising awareness widespread in relation to the problem of victimization in Italy.

Good practices can be treated on the basis of two perspectives:

a) the perspective of soft law instruments. These tools will be indicated in a later section: Guidelines of the Public Prosecutor's Office of Trento, Notice to Offended Persons of the Public Prosecutor's Office of Tivoli, Guidelines of the Public Prosecutor of Trieste, Protocol of the Prosecutor's Office of Teramo, Substantial and Judicial Profiles on the subject of particularly vulnerable victims set up by the Tivoli Bar Association.

b) the perspective that takes into consideration all the practices that are adopted by the centers for assistance to the victims present on the Italian territory.

These are practices that provide for the reception of the victim in a reserved and secure place and which bring into play and implement legal, administrative, social and psychological skills. Very often the victim who addresses the centers is directed and accompanied by the operators at the judicial offices and at the social and health services. Emotional containment strategies are also implemented in relation to the fragile victim and reinforcing the bonds and relationships between the victim and his family and the social circle.

The newly formed Crime Victim Assistance Association plans to establish good common operating practices, which will be followed by all associated victim assistance centers.

## INTRODUCTION

The present national report aims at assessing the practical implementation of the Victims' Directive in Italy in the context of project VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe.

For this purpose, an adequate methodology was created and adopted. The first two steps taken in order to begin this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews.

The desk research was the first stage of national research. It included research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are related to victims' rights. It collected and systematized existing quantitative and qualitative information on the research topic, covering, for example, statistics on the situation of victims, academic literature on the topic of victims' rights implementation, media reports on the topic, relevant NGO researches and government reports to Intergovernmental Organisations.

The national online survey was a particularly important tool for the research as it enables a much broader evidence base and allows for statistical analysis. It consisted of closed-ended questions directed at organisations and practitioners having contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles

and rights provided by the Directive are transposed into Italian law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

Furthermore, after such thorough analysis, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These are very important chapters in this report, since they provide practices which might be good practices to be implemented by other Member States and be maintained in Italy, and they also provide information on what is lacking or failing in the practical implementation and can be improved. This is vital for Italy itself and for other Member States which might present similar less positive aspects. The final chapter will provide a conclusion of this report.

## BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law until 16 November 2015<sup>1</sup>.

In the Italian legal system, especially after the transposition of the Directive 2012/29/EU (hereinafter, Victims' Directive), the main regulatory instruments for orientation in the field of protection for victims became:

- Criminal Code;
- Code of Criminal Procedure (hereinafter CCP);
- Civil Code;
- Code of Civil Procedure;
- Legislative Decree no. 212/2012.

The Legislative Decree no. 212/2015, which came into force on January 20, 2016, transposed the Victims' Directive.

The Codes reported above do not mention the Directive directly. However, the CCP incorporates the amendments and additions of Legislative Decree no. 212/2015. It should be stressed that the internal rules transposing European directives do not always represent a text that is consistent and coincides with the supranational directive. This sometimes results in incomplete transposition which does not reproduce the precise content and spirit of the text produced at European level.

Article 3 of Legislative Decree no. 212/2015 envisages financial clauses for the implementation of provisions in favour of the victim. The costs deriving from the implementation of the Legislative Decree no. 212/2015 have been valued at € 1,280,000 per year, starting from 2016. In addition, a mechanism has been predisposed for monitoring the implementation costs of the

<sup>1</sup> All Member States, with the exception of Denmark, opted into the Directive system.

regulation.

A comparison can be made, also from a visual point of view, between the content of the Directive 29/2012 and the content of the Legislative decree no. 212/2015 (which has an apparatus in the Code of Criminal Procedure). In doing so, we can be able to verify in a real way which contents of Directive 29/2012 have been incorporated into the Legislative Decree no. 212/2015 and, consequently, into the Code of Criminal Procedure. We must, however, overcome a binary approach that considers only the alternatives: TRANSPOSED/NOT TRANSPOSED, to accommodate a perspective that also takes into account:

- A partial transposition;
- A collateral or tangential transposition;
- A solely formal transposition (i.e. devoid of operational content)/substantial and effective transposition.

While we carry out the visual examination, we must specify that it is an analysis that only considers the aspect of the formal transposition, regardless of the concrete implementation and the actual implementation of the rules.

- Art. 2 - Definitions: the law has been only partially implemented and has been included in art. 90, paragraph 2 bis of the Code of Criminal Procedure;
- Art. 3 - Information and support: the law has been formally transposed and is included in art. 90 bis of the Code of Criminal Procedure;
- Art. 4 - Right to obtain information from the very first contact with a competent authority: the provision has been partially and formally implemented in art. 90 bis of the Code of Criminal Procedure, points: a), b), e), f), g), h), i), l), m), n), o), p) and in art. 143 bis of the Code of Criminal Procedure;
- Art. 5 - Rights of the victim at the time of the report: the principle contained in the law was already present in the Code of Criminal Procedure;
- Art. 6 - Right to obtain information on one's own case: the principles contained in the law have been implemented in art. 90 bis, points: a), b), c) of the Code of Criminal Procedure. In any case, the principles were already present in the same code. It should be noted that art. 90 ter of the Code of Criminal Procedure states that the victim must be informed of the events of the perpetrator's escape and release;
- Art. 7 - Right to interpretation and translation: the law has been partially implemented in

art. 90 bis, paragraph 1, and art. 143 bis of the Code of Criminal Procedure;

- Art. 8 - Right of access to services to assist victims: the law has been implemented in a limited and restricted way in point p) of art. 90 bis of the Code of Criminal Procedure;
- Art. 9 - Assistance provided by victim support services: this provision has not been transposed;
- Art. 10 - Right to be heard: the principle contained in the regulation was already present in a limited and formal way in the Code of Criminal Procedure;
- Art. 11 - Rights in the event of a decision not to prosecute: this law has been implemented in art. 90 bis, point c) of the Code of Criminal Procedure. In any case, the principles were already present in the same code;
- Art. 12 - Right to guarantees in the context of restorative justice services: although there are pre-existing references (direct or indirect) to restorative justice and mediation, the principle has not been transposed in an organic and complete way;
- Art. 13 - Right to legal aid: this provision has been formally implemented in art. 90 bis, point d) of the Code of Criminal Procedure. In any event, the principle was already present to a limited extent in the context of the system of legal aid;
- Art. 14 - Right to reimbursement of costs: the principle contained in the law was already present in a limited way in the regulations on legal expenses;
- Art. 15 - Right to the restitution of property: the law was already present, in a fragmented way, in the Code of Criminal Procedure;
- Art. 16 - Right to obtain a decision on compensation from the offender in the context of criminal proceedings: the provision has been transposed in a limited and restricted way in art. 90 bis, point m). In any case, the principle was already present to a limited extent in the Code of Criminal Procedure;
- Art. 17 - Rights of victims residing in another Member State: the law has been transposed in a limited way by Legislative Decree no. 204/2007;
- Art. 18 - Right to protection: the principle contained in the norm was already present in a limited way in the civil and criminal legislation on protection orders in favour of the victim;
- Art. 19 - Right to lack of contact between the victim and the offender: the provision has been implemented in a limited way in art. 351, paragraph 1 ter, of the Code of Criminal Procedure;

- Art. 20 - Right of victims to protection during criminal investigations: this rule has been implemented in a limited way in paragraph 1 bis of art. 190 bis of the Code of Criminal Procedure;
- Art. 21 - Right to privacy: this rule has not been transposed. In any case, the principle was already present in a limited way in the Code of Criminal Procedure and in the legislation on the protection of privacy;
- Art. 22 - Individual assessment of victims to identify specific protection needs: the law and the principles it contains have been transposed in a limited way in art. 90 quater of the Code of Criminal Procedure;
- Art. 23 - Right to protection of victims with specific protection needs during criminal proceedings: this provision has been implemented in a limited way in art. 351, paragraph 1 ter, art. 362, paragraph 1 bis, art. 392, paragraph 1 bis, art. 389, paragraph 5 ter and art. 498, paragraph 4 quater of the Code of Criminal Procedure;
- Art. 24 - Right of minors to protection during criminal proceedings: the principle contained in the provision was already present in the context of procedural law. The express acknowledgement of the presumption of minors in the event of uncertainty (art. 90, paragraph 2 bis of Legislative Decree no. 212/2015) is worthy of appreciation;
- Art. 25 - Training of operators: This rule has not been transposed;
- Art. 26 - Cooperation and coordination of services: this rule has not been transposed.

### **The status and role of the victim**

Italian criminal rules are contained in the Penal Code (C.P.) and in special criminal laws. Criminal violations (technically called “crimes”) are divided into two classes: crimes and contraventions. Crimes are the most serious violations; the contraventions concern minor violations of administrative and disciplinary interests.

According to their definition, crimes must have the following requisites: a) material element (conduct), b) non-juridical, subjective element (mens rea, from Latin “guilty mind”). Crimes can be prosecuted following two ways: the complaint and the lawsuit. The complaint cannot be retracted; the complaint can be withdrawn by the person offended by the crime.

The investigations are conducted within the “Preliminary Investigations”, which are carried out by the Judicial Police under the direction of the Public Prosecutor. During preliminary investigations, the operators collect the sources of evidence that must be examined and confirmed during the process.

The crimes are punished with the model of the “Fair Trial” envisaged by art. 111 of the Constitution and contained in detail in the Code of Criminal Procedure (C.P.P.). The Fair Trial provide for:

- an impartial judge;
- symmetric rights for the prosecution and the defense;
- the formation of proof with cross examination;
- the motivation, that the judge’s decision must contain.

The suspected, or the accused, has the obligation to be defended by a lawyer: he/she cannot defend himself/herself.

The decision of the court of first instance can be reviewed by a judge of appeal and assessed in its logical consistency by a judge of the Court of Cassation.

The victim of the crime can interact with the investigators during the preliminary investigations, bringing sources of evidence and carrying out private investigations; during the trial the victim is heard as a witness and can claim compensation for damages deriving from the violation.

# EVALUATION OF PRACTICAL IMPLEMENTATION

## ARTICLE 2 - DEFINITIONS

*For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

The content of the Art. 2 of the Victims' Directive was sufficiently implemented by Legislative Decree 212/2015, which made some additions to the CCP.

In the Criminal Code and in the CCP the definition of victim is missing, which is replaced with that of the offended person. The offended person is the one who has reported a detrimental consequence from the commission of the crime<sup>2</sup>.

The damage is assessed on the basis of patrimonial criterion, biological criterion and existential and moral criterion.

Article 90 of the CCP recognizes the possibility for the offended to exercise certain rights and faculties, both in the context of preliminary investigations and in the judgment (excluding the Cassation phase). Among the rights there is, also, the one of proving to the investigating and judicial authorities' argument of accusatory nature and evidence-based.

<sup>2</sup> As we shall see in the following sections, victims with special protection needs are referred to as "particularly vulnerable victims (art.90-quater CPP).

Article 90 does not exclude from the status of offended person:

- the juridical person, who can intervene through the natural person his legal representative;
- the person of the same sex who has been a partner of the deceased victim, can benefit from the status of offended person. However, it is necessary that between the two partners an affective relationship has been maintained with stable cohabitation;
- the partner of different sex, unmarried from the deceased victim, can enjoy the status of offended person if between the two partners an affective relationship has existed with stable cohabitation;
- the victim of crime, in case the offender is unknown, can enjoy the status of offended person. If a definitive decision is taken that establishes that the offender is unknown, the victim can also access (with various limitations) the trust set by Act 122/2016;
- the resident in another EU country who is a victim of crime enjoys, like the resident in Italy, the offending person's status;
- the migrant without documents that is a victim of crime enjoys, like the Italian citizen, the status of offended person;
- minors who witness violence can (1) be considered to be offended by resorting to the conditions of victimization; 2) can enjoy precautionary and protective measures. Regarding the minor victim, it should be noted that in case of doubt about the minor age, the judge has available a medical examination aimed at ascertaining it and, in case of doubt, the minority is presumed.



## ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

*Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.*

The content of Art. 3 of the Victims' Directive, in matters of support to victims, established that they have the right to be informed and to be able to communicate with the authority in a comprehensible way.

The D.Lsg. 212/2015 introduces provision of Art. 90 bis of the CCP: "Information to the offended person - The offended person, from the first contact with the proceeding authority, shall be provided with information in a language understandable to him or her".

This means that the offended person has the right to communicate and receive communications in a language known to him/ her (with the possible use of an interpreter); it should be possible to think that the content of communications has to be characterized by simplicity. The victim that cannot understand the Italian language is always assisted by an interpreter appointed by the Judicial Police or by the judge.

There are no legal provisions with regard to the provision of information which will take place in oral form and with reproduction in the written report. The informations provided by the operators are generally provided in an oral way. In some cases, the circumstances of the provision of informations are reported in the written statements.

There are no legal provisions in relation to the methods of communication, with regard to particular categories of victims. Especially there are no legal provisions with respect to communication registers for: mentally disabled, elderly, social or ethnic minorities, minors and migrants. There are no formal legal provisions regarding communication methods with victims who have hearing difficulties.

However, there is a general rule (articles 348 and 351 of the Criminal Procedure Code) that states that the judicial police officers can use technical consultants to make their work more effective. This occurs especially for the protected hearings in favour of the minor victims.

The minor victim has the right to be accompanied by a significant adult person: in particular by his/her parents or by those who hold the parental responsibility. The victim who is in a state of psychological weakness has the right to be accompanied by the guardian or the support administrator.

Articles 348 and 351 of the Code of Criminal Procedure are respected and, in practice, the minor or the particularly vulnerable victim is listened with the help of personnel specialized in psychology.

In practice it happens that the child is always accompanied and assisted by parents, and that the particularly vulnerable victim is always accompanied and assisted by a significant person.

Based on the interviews conducted, a difference emerged between the case of the non-complainant victim and the case of the victim who reported the crime<sup>3</sup>. A great lack of communication was noted with respect to the non-complainant victim. The victim who has reported, however, has the right to obtain sufficient communications and information.

It is however necessary to keep in mind that a real informative campaign takes place regarding particular crimes: for example, mistreatment of gender, abuse of minors or sexual violence<sup>4</sup>.

On the other hand, it should be noted that some powers of attorney have adapted to the Directive through a good implementation of the provisions contained in art. 90-bis of the CCP.

The notices that are addressed to the offended person allow a linguistic understanding regarding the rights and the faculties due to the victims<sup>5</sup>. However, it is necessary to reflect on how much literal understanding must be accompanied by a form of psychological assistance<sup>6</sup>.

<sup>3</sup> Interviewee 1.

<sup>4</sup> Interviewee 2.

<sup>5</sup> VOCIARE online survey results.

<sup>6</sup> Interviewee 2.

In the case of the victim who reported, the provision of these notices to offended people, is done in a capillary way and is taken care of by the prosecution, possibly with the support of external<sup>7</sup>. At the Tivoli<sup>8</sup> Public Prosecutor's Office, for example, the notice is edited by an expert to make it more understandable and simpler, as required by the Directive<sup>9</sup>.

The information and communications are therefore appropriate with respect to the rights and faculties<sup>10</sup>; but psychological support for the victims would be necessary. When communicating victim's rights, special attention is given to minor victims<sup>11</sup>.

The Directive refers to a targeted communication based on the concrete conditions of the victims; from this point of view, not everyone at the institutional level can have these skills, so there is indeed a gap in this case. The Tivoli Public Prosecutor's Office is starting to give training that takes into account both the technical and legal aspects, as well as the psychological ones<sup>12</sup>.

It is possible that the victim is accompanied by a companion (family members for example) to have emotional support and to convey the information obtained from the victims<sup>13</sup>.

7 Interviewee 1.

8 Tivoli is a city located in Lazio region, near Rome.

9 Interviewee 2.

10 VOCIARE online survey results.

11 VOCIARE online survey results.

12 Interviewee 2.

13 Interviewee 1; VOCIARE online survey results.

## ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

*Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.*

Article 4 of the Victims' Directive establishes the right of the victim to obtain information regarding the legal procedure. These are detailed informations.

The D.Lsg. 212/2015 introduces provision Art. 90 bis of the CCP on the basis of which the operators must provide the victim "[...] from the first contact with the proceeding authority [...]" the notice in relation to:

- a) the procedures for making complaints, the role he/she assumes in the course of the investigations and the trial, the right to have knowledge of the date and the place of the trial, the one of the indictment and, where brought a civil action, to receive notification of the sentence, also by extract;
- b) the right to receive notification on the status of the proceedings and of the registrations referred to in Article 335, Paragraphs 1 and 2 of the CCP;
- c) the right to be notified of the request to not prosecute;
- d) the right to avail itself of legal advice and legal aid;

- e) the procedures for exercising the right to interpretation and translation of procedural documents;
- f) any protective measures that may be arranged in its favour;
- g) the rights recognized by the law in the event that he/she resides in a Member State of the European Union other than that in which the crime was committed;
- h) the methods of contesting any violation of their rights;
- i) the authorities to turn to, for information on the procedure;
- j) the procedures for reimbursement of expenses, incurred in connection with the participation in the criminal proceedings;
- k) the possibility of requesting compensation, for damages deriving from a crime;
- l) the possibility that the proceeding will be defined, with the remission of a complaint referred to in Article 152 of the Criminal Code, where possible, or through mediation;
- m) the faculties due to him/her, in the proceedings, in which the accused formulates the request for suspension of the trial procedure or in those in which the cause of exclusion of the punishment is applicable, due to the particular tenuousness of the fact;
- n) health facilities in the area, family homes, anti-violence centers and shelters.

Point a) requires that the operators (judicial police officers or the Public Prosecutor directly) provide the offended person with all the information and notions regarding the elaboration, formulation and formalisation of a complaint: also providing information about the different procedural regime of the complaint itself.

Point b) requires the operators to notify the offended person about the possibility of obtaining a written attestation that, on the basis of Art. 335 of the CCP, report the registration of the *notitia criminis*, in the register of suspects, the indication of the number of reports of the crime and the indication of the name of the Public Prosecutor in charge of the investigation.

Point c) prescribes that the offended person should be informed about the possibility of knowing the eventual request to not prosecute, that the Public Prosecutor should present to the Preliminary Investigations Judge.

Point d) prescribes that the offended person should be advised of the right to be assisted by a lawyer from the early stages of the preliminary investigations.

Point e) concerns the case in which the offended person is a foreign citizen. In this case he will have the right to obtain all the procedural information in a language understandable to him.

Point f) establishes that the offended person should be informed about the protective measures that can be arranged in his favour during the preliminary investigations. We are dealing with cases of victims of particular crimes: domestic abuse, gender abuse, harassment and stalking. The information that must be provided must bear in mind both the protection measures that are foreseen by the CCP and the Code of Civil Procedure.

Point i) introduces an informative obligation of a general nature to the operators: the obligation to inform the offended person of the authorities to whom to turn to, in order to obtain information about the proceeding. Seen from a practical point of view, this information obligation will have as its object the precise indication of the offices, secretariats and chancelleries (depending on the state of the proceedings) from which to request information.

Point j) contains the obligation to indicate, in favour of the offended person, the possibility of being admitted to legal aid.

Point k) imposes on the operators the task of informing the offended person, with respect to the possibility of requesting compensation, for the damage deriving from the crime committed. The information content must be organized on two levels:

- the first level provides for the exposure of the various components of the damage: capital, biological, non-pecuniary and moral;
- the second level contemplates the presentation of the rules - both special and general (Act 7 July 2016, no. 122) - which provides compensation to be paid by the Italian State, in case of particular damage and particular victimisation.

At point l) it is established that the operatives must inform the offended person, with respect to the possibility that the procedure to be established can be concluded through the remission of the complaint, or through the experiment of criminal mediation.

Point m) prescribes the need for the offended person to be in the position to know a particular outcome that the starting procedure could take. This in particular in case the offender, making use of the provisions of Art. 464 bis of the CCP (suspension of the trial procedure), intends to make a request for probation. In this circumstance, the accused may propose to be involved in a path of reparation or compensation for damages.

The other information provisions provided for by Art. 90 bis of the CCP will be exposed in the following sections.

The interviews showed that authorities conduct an assessment on a case-by-case basis and personalized according to the needs of each victim, to verify how much and what information is possible to provide in the different stages of the judicial process<sup>14</sup>.

In any case, we must consider three points<sup>15</sup>:

- 1) It is necessary to keep in mind the awareness and the skills of the single operative with respect to the needs of the victim. It is necessary to take into account, first of all, the cultural aspect.
- 2) Time issues must be kept in mind: grasping the victim's needs involves time; moreover, victim's needs change during the course of the procedure.
- 3) We must bear in mind the importance of the relation between the operative and the victim.

Appropriate training is required for operators who come in contact with victims: specifically, the judiciary operators, law enforcement agencies and local institutions' operators.

Based on the experience of Tivoli, according to a 2016 local protocol, all the justice operators involved in this process are trained<sup>16</sup>. The Local Healthcare Company<sup>17</sup> has devised a training project for all its operators, and the same thing was done by the lawyers' order with a course finished in the spring of 2017. This way, a good technical training was provided. What is still missing are integrated paths in which different professionals find themselves in a training programme together, to share effective operational procedures<sup>18</sup>.

In Lazio Region, the first protocol for vulnerable victims was recently signed, aiming to unify all the prosecutors of the Region. It is an important first step, because the Region has decided to deal with this problem, which is not done in other regions nor at national level<sup>19</sup>.

It should be noted that such initiatives need donations from third parties because there is still no financial law in which subsidies are provided. So, beyond their accessibility, the problem is the financing of these local services<sup>20</sup>.

During the field research, it was observed that the first subjects who welcome the victims (attorneys and law enforcement agencies) are equipped to learn how to organize an effective reception<sup>21</sup>.

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14 Interviewee 1.  
 15 Interviewee 2.  
 16 Interviewee 2.  
 17 In Italian it is referred to as ASL.  
 18 Interviewee 2.  
 19 Interviewee 2.  
 20 Interviewee 1.  
 21 Interviewee 1 and 2.

Within many powers of attorney there are specialized sections for victims in conditions of vulnerability (for example: magistrates trained to intervene better and understand better). Police and Carabinieri are certainly more capable to manage certain types of crime and victims<sup>22</sup>. From here it must be pointed out that the legislator says that an individualized assessment must be carried out, but it does not say who should do it<sup>23</sup>: therefore, there is difficulty on this point, also because it isn't told what tools must be used.

It is necessary to consider that, beyond the Directive, it is established a very important instrument in Italy which is the law implementing the Lanzarote Convention (Law n.172/2012). This law has introduced a modification that provides that whenever the deposition of a vulnerable victim (both adult and underage) is collected, the judicial police must have the consence of an expert in child psychology or psychiatry<sup>24</sup>.

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22 Interviewee 1.  
 23 Interviewee 2.  
 24 Interviewee 2.

## ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

*Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.*

Article 5 of Victims' Directive establishes that the victim has the right to obtain a written acknowledgement related to the complaint; and that, if the victim cannot understand the Italian language, the complaint and the acknowledgement shall be translated into his/her language of origin.

This requirement has been transposed in an inadequate and incomplete manner by the Italian legislator.

Point a) of Art. 90 bis of the CCP provides that the operators must provide the victim with only general knowledge about how to make a complaint. In any case, the denunciation can be presented in oral form, to be verbalized by the operators: in this case the complainant can obtain, upon his/her request, a certificate of the presentation. The denunciation can also be submitted in writing and the complainant can obtain, upon his/her request, a declaration of deposit referring to that precise denunciation.

In any case, point e) of Art. 90 bis of the CCP introduces the obligation to inform the complainant about how to exercise the right to interpretation and translation of procedural documents.

There are no provisions regarding the right to obtain a translation of the declaration of deposit of the complaint in a language other than Italian.

On the basis of the interviews it emerged that, in practice, no problems were found in relation to communication when victims present a complaint<sup>25</sup>. Victims always receive a written acknowledgement of their formal complaint<sup>26</sup>, receiving linguistic assistance if needed<sup>27</sup>.

In any case, beyond the development of tools to communicate to the victim their rights, we need to understand how this information is received<sup>28</sup>.

25 Interviewee 1.  
26 VOCIARE online survey results.  
27 VOCIARE online survey results.  
28 Interviewee 2.

## ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

*Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.*

Article 6 of the Victims' Directive establishes that the victim must be informed about his/her right to be provided with notices about his/her case.

In this specific subject Art. 90 bis of the CCP establishes:

- point a) (last part) that the operators must provide informations regarding the right to obtain notices about the date and the place of the trial, the charges to be contested and the obtaining of the notification of the sentence extract that will be pronounced.
- point b): information about the right to receive information on the development of the procedure that will be established<sup>29</sup>.
- point c): information about the right, upon prior request, to obtain notice of the decision of the Public Prosecutor to not prosecute. This provision is a particular and perfected application of what is already provided in Art. 408 of CCP. Based on the provisions of Paragraph 2 in the Art. 408, the Public Prosecutor provides notification to the offended person who has requested the decision to not prosecute. Paragraph 3 of Art. 408 prescribes, moreover, that the Public Prosecutor should inform the complainant of his/her right to inspect the investigative

<sup>29</sup> These notices, formally, must have as their object: the name of the Public Prosecutor, the role number that the complaint has taken, the status of the proceedings. These notices allow the complainant to monitor the process of his complaint.

documents, and of his/her right to present an objection within twenty days. It should be noted that in cases of violent crimes against the person and in cases of theft in home and purse theft, the notice of the request to not prosecute is notified to the complainant regardless of his request.

To be highlighted is the addition of Art. 90 ter of the CCP: the law establishes to communicate to the injured person, victim of violent crimes, who has requested it, the events of evasion and release of the offender. This provision is always put into practice by a notification that is carried out by the Judicial Police.

The interviews showed that the amendments brought by Legislative Decree 222/2015 have introduced a good discipline regarding the news concerning the release of the suspect in the precautionary measures; the problem remains with regard to the issue following the final convictions<sup>30</sup>.

The victim's need is a requirement of absolute protection that no legal instrument can ever give it, although the mere fact of communication could give enough peace of mind.

In general, however, a protection system exists. The application of protection, in any case, is assessed by law enforcement agencies, who may even consider it unnecessary. In general, the situation is assessed as very dangerous or there is no danger, there is no middle ground<sup>31</sup>.

Regarding gender-based crimes, wherever a woman is in any danger of potential victimization, she could ask for help to protected facilities<sup>32</sup>.

In conclusion, it can be said that the prosecutors and law enforcement agencies are very sensitive to the protection of the victim, where there a danger to his safety is assessed<sup>33</sup>. It is however necessary to underline that the Italian legislator has not implemented the Directive for measures concerning the protection of the victim in the extra-judicial phase, which is left to informality<sup>34</sup>. There is also no structured funding for institutions that gives protection to victims<sup>35</sup>.

It should be noted that, in practice, the victim can always know the status of the proceedings and can always know the status of the offender or the crime<sup>36</sup>. Victims can also make observations, which the judge can take into account. The authorities are therefore obliged to give information to the victims in case they are requested<sup>37</sup>.

<sup>30</sup> Interviewee 1.

<sup>31</sup> Interviewee 1.

<sup>32</sup> Interviewee 1.

<sup>33</sup> VOCIARE online survey results.

<sup>34</sup> Interviewee 1.

<sup>35</sup> Interviewee 2.

<sup>36</sup> VOCIARE online survey results.

<sup>37</sup> Interviewee 1; VOCIARE online survey results.

## ARTICLE 7 – RIGHT TO INTERPRETATION AND TRANSLATION

*Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.*

Article 7 of the Victims' Directive establishes that, during the different stages of the procedure, to the victim who does not understand the language, a free interpretation and translation service must always be provided.

On this regard, Legislative Decree 212/2015, in Art. 90 bis, clause 1, point e) of the CCP prescribes that the offended person should be informed immediately about his/her right to interpretation and to the translation of the documents of the proceeding. But the D.Lgs. 212/2015 has inserted in the CCP Art. 143 bis as well ("Other cases of designation of the interpreter"), which provides for the assistance of an interpreter to the offended person who does not know the Italian language (Paragraph 2) - also through the use of communication technologies for distance communication, (Paragraph 3) - and free translation of deeds containing information useful for the exercise of his/her rights (Paragraph 4). The Legislative Decree 212/2015 has also introduced, within the implementation rules, coordination and transitional provisions, Article 107 ter, which provides the possibility, for the victim, who speaks a foreign language, to lodge a complaint (and to obtain proof of receipt of it) in a known language.

The research activity highlighted that in Italy this right is universally guaranteed to victims<sup>38</sup>. Lack of interpreters or translators sometimes may result in additional waiting times for the victim<sup>39</sup>. Both interpreting services and translations are provided free of charge<sup>40</sup>. From the interviews carried out, it emerges that a training activity and an increasing awareness activity exists, aimed to police and judiciary officers, regarding the characteristics of a communicative modality through

38 VOciare online survey results.

39 VOciare online survey results.

40 VOciare online survey results.

an interpreter<sup>41</sup>.

In some cases, there are also operators trained on the cultural differences of the victims. In other cases, however, there are problems due to the cultural difference between the victim and the operator, lacking a training activity structured on a national level<sup>42</sup>.

It often happens that instead of the copy of the complaint or the act, translated from the original language, the interpreter reads the document translating it directly in an oral way. It must be considered that there are no regulated systems to control the quality of translations<sup>43</sup>.

It should be noted that it is necessary to organize a training activity for the interpreters registered in the courts: in particular, a training that takes into account the characteristics and vulnerabilities of the victims<sup>44</sup>.

In some cases, it is also happened to meet difficulties because operators could not make the interpreter understand that questions must be exactly the same as those asked, because there is the source of proof to be protected. It is important that interpreters working in the judiciary are also trained on the testimony, so that they understand that the way to ask questions can affect the answers that are given, especially when we are dealing with crimes that must be proved<sup>45</sup>.

It must be kept in mind that all judicial police records must be carried out in written form: then the minutes and the deeds must be translated; an activity of control and verification of the translations of the documents would be necessary<sup>46</sup>. In general, it can be said that a control activity on the quality of translations should be organized centrally by the Italian Ministry of Justice.

41 Interviewee 2.

42 Interviewee 1; VOciare online survey results.

43 Interviewee 1.

44 Interviewee 2.

45 Interviewee 2.

46 Interviewee 1.

## ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

*Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.*

Article 8 of the Victims' Directive imposes on the Member States the preparation of tools and actions that, concretely and in a specific way, address victims to the victim support centers, both the generic and specific ones.

The victim assistance centers may have different type and structure: public or private; voluntary or professional.

Point n) of art. 90 bis of the CCP charges the operators with the duty to provide information to the offended person in relation to the health facilities, to the foster homes, to the anti-violence centers and to the shelters existent in the territory.

The first notation that we can move is the one related to the marked discrepancy existent between the text of the Directive which, as we have explained above, introduces the need to establish victim assistance services; and the text of the Italian transposition law which refers to the addressing of centers of a different nature.

It is perfectly clear how the European legislator intended to promote the centers of assistance to the victims (therefore the need to set up victim centers), while at the same time the way the Italian legislator has indicated different organizations, already present on the territory and already established.

Not only: if the Directive refers to the constitution of subjects with broad competences and indicated in a structured way - as examined above; the D. Lgs. 212/2015 of transposition indicates specific and limited types of structures.

In particular, it indicates:

- a) Healthcare facilities** to which investigators may direct victims of a restricted number of crimes, that can be identified as the ones hostile for physical safety; naturally, not to consider other types of crime, maybe more resounding but as much lethal and detrimental as the first ones. If we want to be precise: point p) charges investigators only with a commitment to information, that become ineffective if it is not followed by a real and concrete conduction to the healthcare facility. This activity could be accomplished in a more effective way by the professionals of a victim support center, that may provide for carrying physically the subject, often without own means and disoriented;
- b) foster homes** are real estate structures intended for the reception of minors, the disabled, the elderly, adults in difficulty, people with AIDS; in wider terms, people with psychosocial problems. Foster homes, if we consider what is prescribed by the Ministerial Decree of 21 May 2001 n. 308, are concerned with precise and circumscribed objectives and are aimed at only potential categories of victims. In particular these structures indicated by the Italian legislator, if on the one hand carry out a meritorious action of containment and social reintegration of the guests, on the other hand they do not possess the same potentialities and competences (from a legal, social and psychological point of view) of the victim support center which, if anything, can direct the subject towards a foster home;
- c) anti-violence centers** are structures in which women who suffer (or have suffered) violence from the partner are welcomed. They offer different services to women victims: telephone reception, personal interviews, hospitality in so-called shelters, assistance in the path that lead to the exit from a violent familiar situation. These centers, on the one hand, possess the vocation and skills of a victim center, but on the other hand they are limited in their range of action as they are exclusively aimed at victims of gender-based violence. This type of crime, although widespread, certainly is not the only case that regards the victims' assistance centers established by the European Directive;
- d) shelters:** they are set up to provide women with a safe place to escape the violence and threats of the partner, which often increases during the period when the woman tries to separate. It is a place where one can calmly embark on a path of emotional and material distancing from the violent relationship and reconstruct with serenity one's own autonomy. Here too, the shelter is an excellent support structure, but the limit is to be set prevalently as a place of protected residence, without often a specific vocation to confront the overall



situation of the victim (legal, health, emotional, patrimonial).

In Italy there are some assistance centers for generic victims: they are both public and private. Furthermore, in Italy a national coordination - organized in a reticular form - of assistance centers for generic victims is about to be established. The centers that will be part of the coordination are mostly of a private nature and set up on a voluntary basis.

On the Italian territory, there are different specialized assistance services for victims. They deal mainly with victims of family mistreatment, gender-based violence, harassment and sexual abuse.

In Italy there is a system of rules that requires the police to provide victims of persecutor crimes, gender crimes and sexual offenses with all the informations concerning the presence of anti-violence centers (which are structures in part different from victim assistance centers): Art. 11 L. April 23, 2009, n. 38, Art. 3 L. 15 October 2013, n. 119.

To be noted, in the Italian legislation there is a lack of rules that require the police to inform victims of crimes other than those indicated above, about the presence on the territory of assistance centers, for generic victims. On this point some strategic actions are necessary:

- the future coordination of the victim centers will have to be recognized by the Ministry of Justice;
- the individual victims centers will have to increasingly establish intense and meaningful relations with the local offices of the Public Prosecutor and with the police;
- the individual victims centers will have to establish relations with local health centers and emergency services;
- the individual victim centers will have to distribute and make brochures available at the public offices indicating in a clear and simple way the services provided, contacts and location.

In conclusion:

- a) it is possible to draw a distinction between centers of assistance to generic victims, and specialized victim assistance centers;
- b) generic victim assistance centers provide aid, support and legal, social, emotional addressing to all victims of crime;

- c) specialized victim assistance centers (category that also includes: some specialized health facilities, foster homes, shelters and anti-violence centers) provide assistance, even from a practical point of view, but also housing and protection, to the victims of particular offenses. In particular: family mistreatment, sexual violence, injuries and, in general, attacks on vulnerable subjects;
- d) the assistance centers for generic victims can be organized and managed directly by public structures: in particular by local authorities, municipalities, public health facilities. They can also be organized and managed by private structures: in particular by third sector associations. In any case, forms of collaboration between public and private structures are possible as well, sometimes involving research centers and universities.

Based on the research conducted, it emerged that the victims' services existent do not restrict access to users<sup>47</sup>: the fact remains that their small number may represent an objective limitation<sup>48</sup>. The Italian Ministry of Justice is aware of the situation and would like to have a generalist center in every region of Italy. There are some contraindications however: in some large regions (such as Piedmont and Lombardy) a single center would not be easily accessible<sup>49</sup>. For example, in Denmark, it does exist an online listening service. This would be a way to break down geographical distances.

It was noted that the judicial authorities refer victims' cases to the anti-violence centers<sup>50</sup>. But it is considered necessary to draft a national protocol, regulating the referral to the centers. Local institutions are coordinating in a national network, but this is due to the various local bodies that organize themselves on their own, without a precise directive<sup>51</sup>.

The Police know the local institutions with which it collaborates: therefore, when deciding who to entrust the victim, Police takes in consideration characteristics of him/her<sup>52</sup>.

One of the problems of extra-judicial assistance is the lack of dissemination of services to assist victims. Where there are services, there are no accessibility difficulties: it is however necessary that victims know of the existence of these services. This not always happens, therefore communication should be strengthened. For example, foreign people who have recently arrived in Italy and who need assistance, may not know about the possibility to have immediate access to these services<sup>53</sup>.

47 VOCIARE online survey results.

48 Interviewee 1.

49 Interviewee 1.

50 VOCIARE online survey results.

51 Interviewee 1.

52 Interviewee 2; VOCIARE online survey results.

53 Interviewee 1.

## ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

*Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.*

Article 9 of Victims' Directive indicates the services that generic victim assistance centers must provide to users: legal and procedural informations; informations with respect to specialized services; emotional support; informations of a patrimonial nature; practical and situational advices.

Italian law does not provide for precise regulation of the services to be provided by the generic victim assistance centers. The assistance centers for generic victims operating in Italy, however, are usually able to provide the services indicated in art. 9 of the Directive.

The legal and procedural advice is provided by a lawyer who performs voluntary service. The lawyer does not take the victim's defense, but explains to the victim the proceeding, its consequences and then directs the victim to other lawyers who can take care of his/her case. Advice on specialist services is provided by an expert in social services. Emotional support is provided by a psychologist or by a counsellor. Advice on patrimonial, situational and preventive issues are provided by a lawyer and by a sociologist.

Generic victim support centers are required to: maintain confidentiality with respect to news received from victims; welcome victims in a peaceful, kind and available environment; maintain a delicate, empathetic and respectful attitude towards users and those who eventually come to

the center with him/her.

For each case treated, the operators perform periodic meetings focused on the topics discussed with the victim, in order to better understand how to address him/her to specific services<sup>54</sup>. Support to victims is offered in different ways, depending on skills the professionals have. The training of the employees of the victim centers is organized on two levels: the first concerns the personal preparation of the individual operator; the second one concerns an interdisciplinary formation<sup>55</sup>. Particular caution, with a reinforced interdisciplinary approach, is applied to victims of sexual abuse or victims who have suffered serious damages.

Regarding the management and organization of services to victims, the problem is not so much the severity of the crime suffered, but the urgency imposed by individual cases: that is when there is a high risk for the immediate safety of the victim<sup>56</sup>. For example, intervention for domestic violence is more difficult because in this case it is necessary to remove the victim as soon as possible from the context in which he is in danger.

In general it is found that the services provide good assistance to the people who turn to them<sup>57</sup>. The problem that remains is that highlighted in the previous section: the limited presence on the territory<sup>58</sup>.

In the case of Tivoli, there is still no system for verifying the effectiveness of the service<sup>59</sup>: the design of standard protocols for accompanying the complaint, for legal support and, when necessary, for the orientation to local services has been hypotised.

The practice that is followed in Tivoli is the following: two consultations are provided at most; the first consultation (meeting) concerns an analysis of the demand by the psychologists in turn and, where necessary, the legal orientation or the accompaniment to the complaint is activated through the specialized sections of the power of attorney, or the psychological support through the ASL. The second consultation (second meeting) is to return and close<sup>60</sup>.

54 Interviewee 2.

55 Interviewee 2.

56 Interviewee 1.

57 VOCIARE online survey results.

58 Interviewee 1.

59 Interviewee 2.

60 The protocol, reported by interviewee 2, is close to the one adopted by Associazione Libra Onlus (Victims' Support Center in Mantova, Italy).

## ARTICLE 10 - RIGHT TO BE HEARD

*Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.*

Article 10 of the Victims' Directive prescribes the identification of the victim's right to be heard during the proceeding and the right to provide evidence.

Italian law recognizes the faculty of interaction for some offended persons. Article 90 of the CCP established that the offended person may present written memories and bring evidences to the judicial authorities and the police.

On this point it is necessary to carry out some clarifications. The offended person may submit statements and bring evidences during preliminary investigations: these memories and these evidences may be borne in mind by the investigators. These faculties can also be exercised during the trial phase; but in this case it must be taken into account that the offended person, unless he/she is a civil party, is not technically part of the proceeding and is not able to contradict. The exercise of these faculties is excluded in the Court of Cassation's judgement. It must be underlined that the offended person can present memories and may bring evidences even without the assistance of a lawyer.

The offended person may request to be heard by the authority. Again, clarifications are necessary. The offended person can be heard by the investigators as a witness in the preliminary investigation; in this case he/she will not be subjected to adversarial proceedings and cross examination, but his/her request to be heard can also be disregarded. The offended person can be heard as a witness in the trial; but in this case he/she will be subjected to an adversarial proceeding and cross examination. In practice, the victim is heard both during the preliminary investigations and during the trial.

The research experience found that when the victim is listened or provides evidence, these contents are taken into account by the court<sup>61</sup>. The statements and testimonies given by the child victim are also taken into consideration<sup>62</sup>.

61 Interviewee 1; VOciare online survey results.

62 Interviewee 2.

What is said by the victim during the preliminary investigations is taken into account by the magistrate: in any case it is necessary to bear in mind that all the sources of evidence that are acquired during the preliminary investigations must be confirmed during the trial<sup>63</sup>.

For some types of victims, for example minors, the testimonial suitability, that is the ability to stay in judgment and to testify, is verified<sup>64</sup>. Under the age of twelve there is a high risk of suggestibility and therefore when dealing with victims of this kind, the courts before listening to them, make it evaluate the testimonial suitability by psychotherapists or experts in the field. This assessment is made which is fundamental for understanding the cognitive skills of the child victim and for assessing the presence of risk factors linked to external suggestibility. Consideration is given to the possibility of excluding any risks to the reliability of the testimony related to the type of person (minor victims, disabled victims, victims within a vulnerability that could weaken their role of testing within the criminal trial)<sup>65</sup>.

63 Interviewee 1.

64 Interviewee 2; VOciare online survey results.

65 Interviewee 2.

## ARTICLE 11 - RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

*Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.*

Article 11 of the Victims' Directive deals with the need to recognize the victim the right to request a review of the decision not to prosecute by the Public Prosecutor. It has been partially debated on this subject above, in the sub-section exposing art. 6 of the Directive.

On this regard, we can add that the CCP, art. 410, allows the offended person to propose opposition against the request to not prosecute of the Public Prosecutor. Doing so, the offended person must indicate:

- the additional investigations that the Public Prosecutor should carry out;
- the additional evidences to be evaluated and investigated.

Following the request, proposed by the offended person, of opposition against the decision to not prosecute, there will be a brief trial in front of the Judge for Preliminary Investigations; the person under investigation may take part in this brief trial.

The Preliminary Investigations Judge will reject the opposition if:

- the offended party will not produce satisfactory indications of supplementary investigations and will not have produced further evidences;
- the accusation is unfounded in substance and in law;

- the offender is unknown.

In case of the Preliminary Investigations Judge accepts the objection of the offended person, then he will order the Public Prosecutor to: a) carry out further investigations; or b) to formulate an accusation.

In case of investigative inactivity by the Public Prosecutor, Article 413 of the CCP recognizes the offended person the right to request the intervention of the Attorney General to undertake or to continue investigations.

It is necessary to underline that the offended person who intends to propose an act of opposition against the decision to not prosecute formulated by the Public Prosecutor, needs an adequate technical and legal support; in particular to examine the documents, to acquire copies of them and to write the text of the opposition. In practice the victim has access to legal documents but, it is emphasized, the assistance of a lawyer is appropriate.

Based on the interviews carried out, if the prosecutor decides not to prosecute, the victim may request this decision to be revised<sup>66</sup>. This is done by proposing an act of opposition to the filing request. Following the opposition there is the possibility that the decision not to exercise the criminal prosecution will be overturned.

In practice, however, it is necessary that those who propose the opposition bring effective arguments and evidence in favor of their thesis<sup>67</sup>.

<sup>66</sup> Interviewee 1.

<sup>67</sup> Interviewee 1.

## ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

*Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.*

The art. 12 of the Victims' Directive regards the guarantees due to the victim within the restorative justice path: it is necessary that the victim participates to the restorative trial without incurring into any further damages or additional dangers for his/her safety. This article must first of all questions the establishment and the functioning of restorative justice within the internal law of the Member States.

If we consider the Italian situation, we can detect the lack of an organic framework with respect to restorative justice procedures. In fact, there are only direct, indirect, or implicit references in the following rules:

- art. 35 of the D.Lsg. 274/2000 which, in the matter of minor offenses, allows the Justice of the Peace to declare the extinction of the crime due to the reparatory conduct of the offender;
- art. 162 ter of the Criminal Code, which considers the execution or the offer of execution of reparative conducts as a cause of extinction of the crime punishable on complaint;
- art. 90 bis of the CCP, which requires the operators to inform the offended person about the possibility of concluding the case with a mediation with the offender;
- art. 168 bis et seq. of the Criminal Code and art. 464 bis et seq. The CCP concerning the suspension of criminal trial with probation for adults: the regulations establish a program that also passes through the elimination of the harmful consequences of the offence and the damages in favour of the offended person;

- art. 47 of the Penitentiary System: the law provides for the accused to spend time as community service work. Among the obligations during the probation time there is also the one of taking care of the interest towards the victim of the crime.

There is a complete lack of specific regulations to clarify the protective measures in favour of the victim during the restorative justice path.

It is clear that, during this process, whenever necessary a confrontation between the victim and the offender, aimed at the mediation or at the research of a restorative solution, the services involved (even the centers of assistance of the victims of crime) could put in place every precaution in order to:

- assure that the session is conducted in a neutral environment;
- ensure that the facilitator discreetly controls the movements of the two sides;
- ensure that the victim is not left alone with the offender;
- ensure that the victim can be assisted by a person of his/her trust. In practice, the victim is assisted by a person of his/her trust; very often, as in the case of civil mediation sessions, the victim can also be assisted by a lawyer.

Based on the interviews, it emerged that in Italy there is a network of associations that provide restorative justice services, but not in a structured way<sup>68</sup>. Restorative justice services, in general, are organized by local organizations, such as the Municipalities. There are some small local projects of restorative justice, but these are isolated initiatives<sup>69</sup>.

Legislative Decree no. 212/2015 implementing the Directive does not provide anything for this purpose; the only type of restorative justice that is practiced is within the juvenile process with article 28 of the D.p.r. n. 448/1988, which is the challenge to minors who have committed crimes<sup>70</sup>.

68 Interviewee 2.

69 Interviewee 1.

70 Interviewee 2.

## ARTICLE 13 - RIGHT TO LEGAL AID

*Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.*

The art. 13 of the Victims' Directive requires the Member States to establish that the victims involved in criminal proceedings have access to free legal aid.

The regulatory framework<sup>71</sup> in Italy is the following. May be eligible for legal aid:

- whom holds an annual taxable income as from the last statement of income, not exceeding **€11,493.82;**
- **Italian citizens, foreign citizens and stateless persons.**

Some specific cases are:

- the person victim of an offence as maltreatment against family members and cohabitants<sup>72</sup>, mutilation of female genital organs<sup>73</sup>, sexual violence<sup>74</sup>, sexual violence against minors<sup>75</sup>, sexual acts with a minor<sup>76</sup>, group sexual violence<sup>77</sup>, reduction or maintenance in slavery or servitude<sup>78</sup>, minor prostitution<sup>79</sup>, child pornography<sup>80</sup>, stalking<sup>81</sup> referred to in articles 572, 583-bis, 609-bis, 609-octies and 612-bis, as well as, if committed against a minor, offences referred to in articles 600, 600-bis, 600-ter, 600-quinquies, 601, 602, 609-quinquies and 609-undecies of the Criminal Code, may be accepted to the legal aid in derogation of the income threshold established by law;

<sup>71</sup> Based on the Decree of the President of the Republic No. 115/2002, the victim can be admitted to legal aid.

<sup>72</sup> Maltreatment against family members and cohabitants, **art. 572 Penal Code.**

<sup>73</sup> Mutilation of female genital organs, **art. 583-bis Penal Code.**

<sup>74</sup> Sexual violence, **art. 609-bis Penal Code.**

<sup>75</sup> Sexual violence against minors, **art. 609-ter Penal Code.**

<sup>76</sup> Sexual acts with a minor, **art. 609-quater Penal Code.**

<sup>77</sup> Group sexual violence, **art. 609-octies Penal Code.**

<sup>78</sup> Reduction or maintenance in slavery or servitude, **art. 600 Penal Code.**

<sup>79</sup> Minor prostitution, **art. 600-bis Penal Code.**

<sup>80</sup> Child pornography, **art. 600-ter Penal Code.**

<sup>81</sup> Stalking, **art. 612-bis Penal Code.**

- the foreign minor unaccompanied and involved under any title in a court proceeding, is entitled to be informed of the opportunity to appoint a lawyer of trust, even through the tutor appointed or the person acting as the body responsible for the minor<sup>82</sup>, and to avail of any legal aid at the expense of the State at every stage and grade of the proceeding, according to current regulations;
- minor or adult sons not financially independents, orphans of a parent caused by murder committed against the same by their spouse, even if legally separated or divorced, or by the other party of the civil marriage, even if the Civil Union has ceased, or by the person who is or has been tied by emotional relationship and stable cohabitation, may be eligible for legal aid, even in derogation of the income threshold established.

The application for admission in the civil sector should be presented at the Secretariat of the Council of Bar Association, with regards to:

- The office of the magistrate in front of which occurs the trial;
- The office of the magistrate in charge for the trial, if the hearing has not been started yet.

Application forms are available at the Secretariats of the Council of the Bar Association. The application form must be presented in person by the party concerned with attached a photocopy of a valid ID document; otherwise it can be presented by the offended person's lawyer, who must authenticate the signature of the person subscribing the application form.

The application must include:

- the application for admission to the legal aid;
- personal data and social security number, both of the applicant and of the family members in the household;
- the statement of income related to the tax year preceding the application (self-certification);
- the obligation to communicate any changes of income to be considered for the acceptance of the benefit;
- factual and legal reasons in support to the assessment of the merits of the application;
- evidences (documents, contacts, witnesses, technical consultancies, etc. to be attached).

<sup>82</sup> Pursuant to article 3, paragraph 1, of the law of May 4, 1983, n. 184, and subsequent modifications.

In practice, those who turn to the competent office to request admission to legal aid, are always followed with care and expertise. Foreigners usually obtain free legal aid in a language other than Italian<sup>83</sup>.

In the event that the victim has linguistic difficulties, he/she is entitled to an interpreter without additional costs. As regards the income to which legal aid is recognized, a limit set at € 11,400 is foreseen, although for some offenses (for example sexual violence), free legal aid is provided irrespective of the victim's income<sup>84</sup>.

The request for legal aid is prepared and presented by the victim's lawyer and is therefore always written in Italian.

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83 Interviewee 1.

84 Interviewee 1.

## ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

*Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.*

The art. 14 of the Victims' Directive stipulates that Member States should provide for a system of reimbursement of expenses incurred by the victim for its participation in the proceeding.

The art. 90 bis point j) of the CCP establishes that the operators must inform the offended person about the possibility to obtain reimbursement for costs related to the participation in the criminal proceedings. On this regard, the specific regulation that we can draw attention to is the one established by the T.U. on the subject of justice expenses (Presidential Decree 115/2002).

As far as we are concerned the rule establishes that, if the party (included the offended person) is admitted to the government legal aid scheme, the Treasury will also anticipate the expenses related to acts claimed by the same party (article 4). This provision, however, limits the reimbursement exclusively to the expenses for the completion of procedural acts;

In any case, the art. 143 bis, paragraph 4, of the CCP, establishes that "the victim who doesn't know the Italian language has the right to free translation of acts, or parts of them, which contain useful information for the exercise of his/her rights. The translation may be arranged either verbally or summarized if the prosecuting authority considers that there is no detriment to the rights of the offended person".

In practice there is no recognition of reimbursement of expenses, except the cases illustrated above<sup>85</sup>.

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85 Interviewee 1.

## ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

*Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.*

The art. 15 of the Victims' Directive prescribes that an effective legal system is established for the return to the victim of the property seized as a result of criminal proceedings.

In this case we refer to properties owned or available to the victim. Regarding the Italian law, we can consider:

- Article. 262 of the CCP: "When it is not necessary to hold on to the seizure for trial purposes, the seized properties must be returned to those entitled to them, even before the sentence". In any case the property seized may not be returned when the seizure is necessary for the purpose of a preventive nature;
- the art. 263 of the CCP sets out the procedure for returning properties seized;
- on the other hand, article. 324 of the CCP provides for a procedure for the review of decisions taken in relation to seizures.

It is necessary to emphasize that the procedures for returning properties seized and for reviewing the decision made are often complex and the appellant must necessarily rely on the advice of a lawyer.

The procedure for the return is sometimes long; often, the returned thing no longer shows the traces of the crime.

In practice, movable and immovable assets that are seized during the criminal proceedings, if they belong to the victim, are returned immediately<sup>86</sup>.

<sup>86</sup> Interviewee 1.

## ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

*Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.*

The art. 16 of the Victims' Directive requires that the victim have to be placed in a position to obtain compensations for damages received from the offender.

Article. 90-bis of the CCP, point k), established that the operators must inform the offended person of the possibility to request compensation for the damages inflicted by the offender.

The offended person has two ways to claim compensation for damages. The first one is to bring a civil action in the criminal proceeding against the accused. In that case, he will have to turn to a lawyer and he/she will have to participate to the trial. In the event of a conviction, the accused will also be condemned to pay damages in favour of the civil party<sup>87</sup>.

The second one is to bring an action for damages in front of the Civil Court. It should be noted that the Civil Court, for compensation purposes, may ascertain indirectly the commission of the crime.

It must be remembered that the victim of crime has the right to compensation for pecuniary damage (expenses incurred and missed economic opportunities due to the criminal proceeding), biological damage, existential damage and non-pecuniary damage.

It should be noted that, if the criminal conviction may be imposed only on the defendant proved to be guilty, the sentence to pay damages for the crime may weigh on other parties proved to be responsible on a civil level, by law or by contract.

<sup>87</sup> At this stage it is important to underline that: a) the defendant may be ordered to pay damages in general, which will be quantified by the civil court (in this case the Civil party must enforce a civil procedure); b) the accused may be sentenced to pay an amount specific and determined; c) the accused may be sentenced to pay a partial sum, to be specified by the Civil Court (also in this case the Civil party must enforce a civil procedure).



A sentence for damages in favour of the victim does not necessarily mean an immediate satisfaction. Sometimes, in order to get compensation, the victim must exercise an enforcement action against the properties of the party liable on a civil level. Moreover, it does not necessarily mean a satisfaction to the victim at all. If the subject liable on a civil level does not have properties to be subjected to compulsory execution, the victim will not get any compensation. If the perpetrator remains unknown, and if no civil liability can be identified, the victim of crime's compensation risks remaining unsatisfied.

Directive 2004/80/EC establishes that Member States must compensate victims of violent crimes, in the event that the responsible is unknown or not capable on the economic level. The transposition of the Directive on behalf of Italy happened in an unsatisfactory way, starting with the Legislative Decree. 204/2007, and then by l. 122/2016. In case of refusal of State compensation, victims, to have their rights acknowledged, are forced to turn to the Civil Courts.

Law 122/2016 places several limitations on the obligation of compensation to be borne by the State: there are limitations on income, limitations with respect to the crimes 'presumed' that give entitlement to the benefit, limitations of a personal nature for the victim. It must be emphasized that the victim who is denied compensation can apply to the civil court.

There are legal mechanisms that can encourage the spontaneous compensations for damages in favour of the victim. On the basis of the provisions of art. 165 of the Criminal Code, in some cases decided by the Court, the offender may benefit from the suspended sentence only if it provides for compensation. This is an important incentive to compensate those who have suffered damages as a result of a criminal offence. Furthermore, on the basis of art. 162 ter of the Criminal Code, the accused who has repaired entirely (or have offered to repair entirely) can benefit from the declaration of extinction of the offence as long as it is an offence punishable upon complaint.

Article. 162 ter of the Penal Code has been recently added, on 23 June 2017, and represents an instrument aimed at facilitating the declaration of extinction of certain crimes whenever the offender has fully repaired the damage, or where he/she has shown to have offered, on the basis of the forms provided by the Civil Code, repair for the entire damage. It must be emphasized that the extinction concerns only the crimes that are punished at lawsuit susceptible of remission.

## ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

*Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position:*

*a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.*

*Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.*

*Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.*

Art. 17 of the Victims' Directive requires that the victim must be put in the position to access cross-border protection services; this protection was introduced by Directive 80/2004

In Italy this matter is regulated by the D.Lsg. 204/2007, which provides:

- art. 1: "1. When a crime has been committed in the territory of a Member State of the European Union which provide for some forms of compensation provided in that Member State and the applicant is permanently resident in Italy, the Public Prosecutor Office at the Appeal Court where applicant lives, as assisting authority: a) gives the applicant the essential information concerning the compensation scheme provided by the Member State of the European Union in which the crime was committed; b) provides the application forms to the applicant; c) if required by the applicant, provides guidance and general information on how to complete the application with any documentation requested; d) receives claims for compensation and submits them without delay, together with the relevant documentation, to the competent decision-making authority of the Member State of the European Union in which the crime was committed; e) provides assistance to the applicant on how to comply with requests for additional information from the decision-making authority of the Member State of the European Union in which the crime was committed; (f) at the request of the applicant, transmit to the decision authority additional information and any other documentation.

2. When the decision-making authority of the Member State of the European Union in which the crime was committed decides to hear the applicant or any other person, the Prosecutor at the Court of Appeal, as assisting authority, prepares what it is necessary for decision-making authorities to listen directly as it is established by the law of the Member State. If the video-conference takes place, the provisions of law January 7, 1998, nr. 11 are applied.

3. At the request of the decision-making authority of the Member State, the Attorney General at the Appeal Court, as assisting authority, shall provide for the realization of the hearing of the applicant or of any another person, and transmits the report to the competent authority".

- Art. 2: "1. In proceedings for the provision of grants to be paid by the State, under special laws in favour of the victim of crime committed in the territory of the State, or in favour of his/her own survivors, when the applicant is resident in another Member State of the European Union, the application for the grant can be filed through the authority of assistance at the Member State of the European Union where the applicant is permanently resident.

2. In that case, the authority specified by the special law, competent for the compensation decision, submits without delay to the Member State of the European Union assistance authority where the applicant is permanently resident, and gives to the applicant the receipt of the compensation claim, the name of the officer or the indication of the office who or which will proceed to the instruction of the case and, if possible, the time necessary to take the decision.

3. If the decision-making authority decides to proceed with the hearing of the applicant or any other person, it may request the assistance of the assisting authority of the Member State of the European Union where the applicant is permanently resident. To this end, the decision-making authority may ask the assisting authority to prepare what is necessary to proceed directly with the hearing, including through video-conferencing system. The decision-making authority can ask the assisting authority to proceed with the hearing itself and to send the relevant report.

4. The decision-making authority shall inform the applicant and the assisting authority without delay about the compensation application decision".

Regarding this, it is interesting what is provided for by art. 2 of Italian Legislative Decree 212/2015 which introduces the art. 108-ter. The law states that, when the offending complainant is resident in Italy and the offense has been committed in one Member State, the Public Prosecutor sends the complaint to the General Prosecutor Office for the transmission to the competent judicial authority.

Procedures for the cross-border protection of non-resident victims that are in Italy are generally respected.

The Italian competent authority is able to formalize a complaint made by a victim residing in another Member State, immediately after the presentation of the same<sup>88</sup>. This procedure works: the complaint is presented within a reasonable time<sup>89</sup>.

Videoconferencing as a form of deposition can only be used for crimes involving the application of a very restrictive prison regime (mafia crimes, for example)<sup>90</sup>.

88 VOCIARE online survey results.

89 Interviewee 1.

90 Interviewee 1; VOCIARE online survey results.

## ARTICLE 18 - RIGHT TO PROTECTION

*Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.*

Art. 18 of the Victims' Directive establishes, at the expense of the Member States, the commitment to define a system of protection in order to protect victims and their relatives from secondary and continued victimisation.

The protection measures provided for by the Italian judicial system is the following:

- **Civil protection measures.** They are established by art. 342-bis of the Civil Code that prescribes: "when the behaviour of the spouse or the one of the partner is detrimental to the physical or psychological safety, or this behaviour is detrimental to the freedom of the spouse or of the partner, the Judge, at the request of one of the parties, may adopt by administrative order one or more than one measures provided for by art. 342-ter". The content of the protection measures (art. 342-ter of the Civil Code) must provide the imposition of the removal of the dangerous person and the intervention of social services. The procedure established for the actualization of protective measures is provided for in art. 736-bis, informed by the preemptive character of Civil law, contemplating the possibility to obtain a provisional measure finalized to protect the offended person, even without cross-examination;
- **Penal protection measures.** Art. 282-bis of the CCP allows the Judge to order the individual considered to be dangerous to leave the family house and to avoid specific places attended by relatives or by ex-partners. Art. 282-ter of the CCP strengthens the removal order, allowing the Judge to order the dangerous person to avoid places attended by relatives and by acquaintances of the offended person, and to order him/her to not communicate with the offended person and with those who belong to his/her personal relationships' network with any means (physical nor telematic). Art. 384-bis of the CCP provides for the criminal police

to give urgently order – having informed the Public Prosecutor – for the removal from the family home of the individual caught in the act of the crime concerning domestic violence, family abuse and sexual abuse.

A lot has been done on the subject of victim protection, but there is still room for improvement. The concrete actualization of physical protective measures for victims, particularly regarding their recovery and their reception in sheltered facilities, depends on the cooperation between social services, victim support centers and sheltered homes<sup>91</sup>.

Judges in Italy are very sensitive to the needs of the victims, so they are inclined to grant precautionary measures to protect them<sup>92</sup>.

The protection to avoid secondary and repeated victimization is arranged taking into account the individual characteristics and needs of the victim. The problem is numerical and structural, that is the lack of protection centers: there is a problem of access thresholds, and social services place the victim in the hotel for emergencies, or informal measures are found with friends and relatives<sup>93</sup>.

In many cases, protection means that the offender stays in the house, while the victim is moved, and this is a form of secondary victimization, because it is the victim who is decontextualized from their environment<sup>94</sup>. Maneuvers are being studied to ensure that the person responsible is the one removed from the house. However, problems arise in relation to the fact that the offender knows the place where the victim lives. In the case of offenders of violent crimes, it is not possible to guarantee total protection to the victim in case he stays at home and is therefore easily available.

Sometimes, there are emergency situations, where it is urgently necessary to place the victim in a safe place and you can not find a structure because there are few safe houses on the territory<sup>95</sup>.

There are therefore physical problems such as physical protection, but also problems due to the fact that psychological needs do not always match the times of court trials<sup>96</sup>. Where there is a need to protect the victim, there is not always an emergency network that works to guarantee that protection. Lastly, the research highlighted that victims and their family members are treated in a respectful manner by authorities during all the proceeding<sup>97</sup>.

91 Interviewee 2.  
92 Interviewee 1.  
93 Interviewee 2.  
94 Interviewee 1.  
95 Interviewee 1 and 2.  
96 Interviewee 2.  
97 VOciare online survey results.

## ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

*(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.*

*(2) Member States shall ensure that new court premises have separate waiting areas for victims.*

Art. 19 of the Victims' Directive establishes the conditions through which it must be avoided the contact between the victim, his/her relatives and the offender, where the proceedings take place. Furthermore, the art. 19 asks for the setting of special protected areas reserved for victims.

We are not only facing a problem of a strictly formal and juridical nature, but rather a problem of practical organization of space and time within the judicial and police facilities.

On this point we must distinguish between: courtrooms, waiting rooms within judicial facilities, operational and waiting rooms within police offices, other judicial structures and other services.

Regarding the courtrooms - i.e. spaces where the proceedings take place - generally the accused (where not subject to restriction measures) sits next to his/her own defender, and the victim (or the Civil Party) sits next to his/her own defender. The judge maintains the discipline during the proceeding and he/she can take all the immediate measures aimed at guaranteeing order and quiet (art. 470 of the CCP). The defendant who, despite the judge admonition, continues to maintain unruly or threatening behaviour can be removed from the courtroom by order of the judge (Art. 475 of the CCP). The deposition of victims via teleconference is not provided.

Regarding the waiting rooms: there are some judicial offices' director that made spaces to be reserved to victims and to witnesses – the latter may sometimes make use of an orientation service provided by the courthouse's personnel. Italian judicial structures and infrastructures are often old, so it is not easy to find the provision of separate spaces and different entrances for defendants and victims.

Other places (judicial offices, criminal police offices and other services offices) are organized – concerning spaces and appointments – in order to avoid contacts between victim and offender. Sometimes victims may use reserved waiting rooms and neutral spaces.

From a strictly regulatory point of view it is useful to refer to art. 351 clause 1-ter of CCP, inserted by D.Lgs. 212/2015, which requires that the victim who is particularly vulnerable must be heard by criminal police with a psychologist support; and that, in any case, to the same victim must be avoided every contact with the one who is under investigations.

In the Italian context there are problems when assuring the right to avoid contact between the victim and the perpetrator. Often in the courts there are situations in which the victim-wife finds herself witnessing with her husband-defendant<sup>98</sup>.

It has been observed that judicial police operators are sensitive on this topic and therefore committed to avoid contact, even visual, between the offender and the victim<sup>99</sup>: nevertheless, physical and architectural constraints make difficult to have this right observed.

Very often it is in the sensibility of the judge to decide to avoid that the victim and the offender enter the court at the same time, but the risk that they meet remains<sup>100</sup>.

It has been reported that it would be enough to place the victim in a different building, providing a remote connection with the courtroom in which the trial takes place<sup>101</sup>.

98 Interviewee 1.

99 Interviewee 1.

100 Interviewee 2.

101 Interviewee 2.

## ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

*Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.*

Art.20 of Victims' Directive establishes a series of protective measures regarding victims: particularly the one prescribing that the victim must be interviewed by authorities without unjustified delay since the lodge of the complaint, and that the number of the interviews is kept to a minimum and carried out only when strictly necessary for the purposes of the criminal investigations.

D.Lsg. 212/2015 adds to art. 392, clause 1-bis, of the CCP, a regulation under which the victim particularly vulnerable (on request of the same victim or on the request of the Public Prosecutor) may be heard as a witness, according to the procedure of the pre-trial hearing for gathering evidence before a criminal trial.

It is important to note that this procedure allows to anticipate, compared to the judicial trial, the acquisition of evidences (i.e. the deposition) and to situate them within the preliminary investigation phase.

For vulnerable individuals and for minors the deposition, during the pre-trial hearing for gathering evidence phase, may be acquired with particular caution and protective measures.

In practice, cautions and protections are carried out through the reception of vulnerable subjects in suitable environments, with the presence of specialized personnel<sup>102</sup>.

<sup>102</sup> Interviewee 2.

The listening to the victim is often performed within a reasonable time, while regarding multiple auditions, victims often have to repeat their testimonies more than once. The tools to avoid this are there, but they are not used<sup>103</sup>.

In practice there is a certain sensitivity to the need for the victim to be subjected to the least possible number of hearings. When dealing with proceedings that have multiple defendants it may be necessary for victims to return for recognition<sup>104</sup>. Currently, however, there is a great deal of attention to avoid multiple auditions<sup>105</sup>.

With respect to delays in the hearing of victims, these are due to reasons of protection and investigative reasons. For example: a minor who witnesses the murder/suicide of parents, could be heard immediately only if there are compelling investigative needs. Therefore, it is not said that immediate listening is always protective<sup>106</sup>. The research evidences also that when delays occur, they are mainly due to a Police work overload, that has to give priority to cases on order to their gravity<sup>107</sup>.

In any case, generally, if the victim is heard during preliminary investigations by the prosecution, he/she will then be heard in court.

Medical examinations for victims, in general, are kept at the minimum and essential number and conducted only when necessary<sup>108</sup>. Thanks to good practice and more experience, health services are careful to avoid further victimization with tests that are not needed<sup>109</sup>.

The victim has the right to participate in all the hearings, but in the trial, he/she is heard only once<sup>110</sup>.

Usually the victims can be accompanied by anyone who can provide them with an emotional support<sup>111</sup>.

<sup>103</sup> Interviewee 2.

<sup>104</sup> Interviewee 2.

<sup>105</sup> Interviewee 1; VOCIARE online survey results.

<sup>106</sup> Interviewee 2.

<sup>107</sup> VOCIARE online survey results.

<sup>108</sup> VOCIARE online survey results.

<sup>109</sup> Interviewee 1 and 2.

<sup>110</sup> Interviewee 1.

<sup>111</sup> Interviewee 1; VOCIARE online survey results.

## ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

*Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*

Art.21 of Directive 29/2012 requests that Member States implement measures suitable to defend the victim's privacy during the whole criminal proceeding.

It is necessary to consider that victim's privacy is guaranteed from illegal intrusiveness by the overall trial system. On this regard, it is important to highlight that art. 734-bis of the Criminal Code, condemns<sup>112</sup> those who divulge personal informations and pictures related to the victim of sexual abuse. Nevertheless media, in Italy, often exceed the limits of professional ethics and legality, and indulge in the goriest descriptions.

Often, the Italian State guarantees victims that the competent authorities can take, during the criminal proceedings, appropriate measures to protect privacy, including personal information taken into consideration during individual evaluation, to avoid spreading the victim's image or members of his family<sup>113</sup>. This happens especially in relation to child victims<sup>114</sup>.

The main problems concern the discipline of the press: when the procedural acts become public it would be necessary to provide for a better training of journalists, especially from a professional ethics point of view<sup>115</sup>.

Minor victims are always heard in special places with expert people; more and more frequently, the same happens even with adult victims<sup>116</sup>.

<sup>112</sup> On this point, we can point out that art. 734 bis of the Penal Code punishes with the arrest from three to six months those who disclose the generality and images of the victim of sexual violence.

<sup>113</sup> VOciare online survey results.

<sup>114</sup> Interviewee 2.

<sup>115</sup> Interviewee 2.

<sup>116</sup> Interviewee 2.

## ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

*Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

Article 22 of Directive 29/2012 introduces the need to establish promptly an individual assessment of the victim, in order to identify their specific needs during the criminal proceeding.

D.Lsg 212/2015, in the new art. 90-quater of the CCP, establishes the position of offended person<sup>117</sup>. The offended person might have special protection needs. In order to assess such needs, certain characteristics of the victim and the crime are analysed, such as the age of the victim, his/her psychological status, whether the victim has disabilities, and the type of crime committed.

Regarding the crime committed, the condition of victim with special protection needs is assessed by considering whether the detrimental act was committed:

- a) with violence against the offended person;
- b) with racial hatred;
- c) with discriminatory motivation;
- d) in the field of organised criminal activity;
- e) in the field of organised terrorist activity;
- f) in the field of activity of organisations involved in human trafficking.

Moreover, it should be considered whether the victim is dependent on the perpetrator of the crime from an emotional, psychological and economic point of view.

<sup>117</sup> According to article 90-quater, CCP establishes the figure of the offended person. In this category, it is acknowledged also the victim with special protection needs.

In relationship to the norm some considerations can be developed. The first one concerns the fact that there is no precise definition of victim with special protection needs: article 90-quarter of the CCP does not set a notion, but merely establishes the criteria above mentioned. These criteria, if on the one hand takes in some of the indications provided for in art. 22 of the Directive, on the other hand it risks being limiting and excluding other cases of fragility and vulnerability not expressly established<sup>118</sup>.

The second consideration concerns the practical formalities and procedures to be used to assess particular vulnerability. On this point Article 90-quarter does not foresee anything and seems to leave the judgement to the discretion of the Criminal Investigation Department, the Public Ministry and the judge. This normative void could create problems in the future and it may increase conflicts between agents of opposing interests, particularly between: subjects involved in the legal trial, interested in highlighting the particular vulnerability of the offended person and the defence of the person under examination or accused by the investigation. The assessment of the victim's particular vulnerability is carried out by the judge.

Article. 392 of the CCP (as amended by Legislative Decree 212/2015), provides that it may be required the fulfilment of the pre-trial hearing for gathering evidence before a criminal trial, if the deposition of the offended person who is in a position of particular vulnerability has to be collected.

The interviews revealed that the introduction of the vulnerable victims category opens up a whole series of options and possibilities that are not provided for generic victims.

The assessment of the victim's vulnerability is conducted by the judge and, in any case, by the proceeding authority<sup>119</sup>. The judicial police moreover employs expert personnel in order to assess the vulnerability of the victim<sup>120</sup>. The assessment is conducted on a case-by-case policy, taking into account the wishes of the victim when possible<sup>121</sup>.

In any case, particular attention is given to certain categories of victims: we can refer to child victims, victims of abuse or mistreatment, victims of violence in intimate relationships and also to the elderly<sup>122</sup>.

118 Art. 90-quarter CCP. Condition of particular vulnerability. For the purposes of the provisions of the present code, the condition of particular vulnerability of the victim is deduced, as well as from the age and the state of illness or psychic deficiency, from the type of crime, from the modalities and circumstances of the event for which the proceeding is established. The assessment of the condition takes into account whether the event is committed with violence to the person or with racial hatred; if it is attributable to organized crime or terrorism, even international; to trafficking in human beings; if it is characterized by discrimination; if the injured person is emotionally, psychologically or economically dependent on the offender.

119 Interviewee 1.

120 Interviewee 2.

121 VOCIARE online survey results.

122 Interviewee 2.

## ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

*(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.*

*(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.*

*(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.*

Article 23 of Directive 29/2012 prescribes that during the trial, the treatment of victims with particular needs and vulnerability must proceed with caution and protection particularly as regards their hearings.

On this point we can observe:

- Article 134 of the CCP provides for the possibility – in particular cases and where indispensable – to document the development of procedural activity by audio-visual reproduction means. D.Lgs. 212/2015 has added a fundamental arrangement under which the statements given by the offended person with special protection needs must be reproduced in audio-visual form, outside particular cases as well;
- Article 190-bis of the CCP (as modified by D.Lsg. 212/2015) establishes that, when it is sought to examine an offended person in conditions of particular vulnerability, who has already done a pre-trial hearing, the same examination is admitted only if it has declared objectives and takes place in different circumstances from those of the previous statement;
- Article 351 of the CCP (as modified by D.Lsg. 212/2015) establishes that when the Criminal Investigation Department gathers a brief explanation from the victim with special protection needs, it must seek support from a psychologist; in every case, criminal police must limit as far as possible the number of depositions. Moreover, the Criminal Investigation Department will ensure that during the course of activities to ascertain information, the victim does not have occasion to meet and have contact with the person under investigations;
- Article 362 of the CCP (as modified by D.Lsg. 212/2015) regulates the cases of the Public Prosecutor that requires informations from subjects able to report them. If he/she has to listen to an offended person with special protection needs, the Public Prosecutor must turn to a psychologist;
- Article. 392 of the CCP (as amended by Legislative Decree 212/2015), provides that it may be required the fulfillment of the pre-trial hearing for gathering evidence before a criminal trial, if the deposition of the offended person who is in a position of particular vulnerability has to be collected;
- Article 398 of the CCP (as modified by D.Lsg. 212/2015), establishes that, when an offended person with special protection needs must be heard in a pre-trial hearing, the Judge can, for the Preliminary Investigations, set the audience for the acquisition of the hearing in an suitable place different from judicial locations, or in location characterized by specialized assistance in psychological matter; and it establishes also that the acquisition of evidences must be documented by audio-visual tools;

- Article 498 of the CCP (as modified by D.Lsg. 212/2015), prescribes that, In general there are no problems concerning the protection of victims during the criminal proceedings<sup>123</sup>. It is however necessary to bear in mind that the protection of victims also requires the availability of material, financial and human resources. It happened that certain victims of organized crime were hosted in some external associations because there was no room for those directly assigned to that purpose<sup>124</sup>.

If the victim's age is uncertain and there are reasons to believe that the victim is a minor, it is assumed, to the effects of the procedural law, that the victim is a minor<sup>125</sup>.

Experience has shown that there may be problems regarding the removal of the victim and the need for protection through placement in a protected facility<sup>126</sup>. In Italy we are in a situation of shortage; new protected structures are opening up, but these are not present in a widespread way in the territory. The problem is that some of these structures are linked to specific criminal behavior<sup>127</sup>.

Another problem is when these structures have criteria that do not make it possible to welcome all the victims<sup>128</sup>. There are few centers that are not always able to accommodate victims consistently, because they have too narrow criteria; or because they are meant for gender-based violence; or because they exclude certain types of victims, for example for their age.

Lastly, another issue that has been found regards the access of people over the age of sixty. Underage victims find many spaces, the ones for elderly are less<sup>129</sup>.

123 Interviewee 1; VOCIARE online survey results.

124 Interviewee 1.

125 Interviewee 2.

126 Interviewee 1.

127 Interviewee 1. For example: the parent who is mistreated by the child and has the need to get away, does not easily find space in the structures assigned to gender violence.

128 Interviewee 2.

129 Interviewee 2.



## ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

*Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.*

In case of doubt regarding the age of the offended person, Article 90-bis, subsection 2-bis, in CCP (as modified by D.Lgs. 212/2015) foresees that

If there is a suspicion that the victim is underage, the judge arranges an assessment to it. If doubt persists, the victim is considered a minor.

It is necessary to underline that we are concerned with a significant arrangement but with certain unnecessary aspects: the possibility to turn to expert opinion in order to determine the offended person real age is in fact already present in the CCP.

In the case of impossibility to decide about the real age of the offended person, the norm establishes a legal presumption, according to which the offended person is a minor.

The legal inspection concerning the age of the offended person will only effect procedural ends. It should not be excluded, however, that this procedure can generate problems and interference in the case of judgements on which the offended party is evaluated under-age and the accused wishes to demonstrate him/her to be an adult.

Two fundamental aspects remain. The norm states that it is the judge that have to order the appraisal: without further information we can conclude that it will be the the judge to conduct the hearing. However we cannot exclude the possibility that this could be done by the judge conducting the preliminary investigation during the pre-trial hearing. Moreover, the appraisal conducted to certify the minority must be of the most respectful and least invasive as possible. In particular: a) the certification must be within an adequate structure in the presence, if possible of those exercising parental control, or of other significant persons; b) the certification must take place, if possible, with limited use of radiographic techniques, but seeking help from a multidisciplinary consultation which will include the intervention of: an auxologist, a pediatrician, an endocrinologist and a pediatric neuropsychiatrist. It is an extremely delicate matter and it must be kept in mind the possible spread beetwen the biological age and the administrative age.

Minors of age benefit from a more favorable trial regime, with respect to the procedural modalities concerning the assumption of oral information<sup>130</sup>. Child victims are always considered to have special protection needs. During the trial, child victims may be represented by a lawyer and they may be accompanied by a relative.

Nevertheless, in Italy, audio-video tools are not provided for their testimony<sup>131</sup>.

In the research experience, it has emerged that there is easier to protect minors than adults. For minors there is a whole system of protection regarding placement. The existing tools and procedures are very protective for minors<sup>132</sup>.

130 Interviewee 2.

131 Interviewee 2.

132 Interviewee 2.

## ARTICLE 25 - TRAINING OF PRACTITIONERS

*Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.*

*Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.*

*Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

Article 25 of the Directive 29/2012 underlines the importance of the predisposition and organization of an adequate system that gathers all the operators concerned in helping victims, and expert in victimology.

D.Lgs. 212/2015, which transposed the Directive, does not provide for nothing on this matter. It is however necessary to highlight that in Italy, more recently, the awareness and the attention about victims, has been increasing, particularly among various types of institutions.

The professionals who should be subjected to training on victims' needs and protection belong to different categories. They are police officers, magistrates, judges, lawyers, prosecutors, and victim support officers.

An adequate training course must take into account the following competences: the normative and legal knowledge; relational and psychological abilities; anthropological and cross-cultural competences.

From the interviews it emerges that training activities have been organized for the operators of the victims' assistance centers. The point is that, often, these activities are not homogeneous between them<sup>133</sup>.

Some prosecutors have issued specific directives, addressed to all the police officers, to inform and to instruct them to consult the experts<sup>134</sup>. This not only for the actual collection of the testimony, but also for deciding on a case-by-case basis, evaluating the vulnerabilities in the best possible way. We must also underline that over the years there has been an ever-increasing investment compared to the issues related to training, about the testimonies of vulnerable victims; law enforcement agencies are forming with respect to these situations<sup>135</sup>.

Regarding Judges and Public Prosecutors, it should be noted that training modules were introduced within the magistrates' training school<sup>136</sup>.

As far as lawyers are concerned, it can be noted that in Tivoli a course on these issues was held that lasted a year<sup>137</sup>.

In general, however, training is absolutely not sufficient because it lacks what was desired in the Directive and in the European Conventions<sup>138</sup>. To solve the problem a multilateral agreement would be needed between the competent bodies: Region, Ministry of the Interior and Ministry of Justice; and these are agencies that have to agree to implement training paths<sup>139</sup>. In any case, the newly established DAFNE National Network will elaborate and propose a unified training model for the Italian territory. And this unification will also be done for the training to be received by magistrates and lawyers<sup>140</sup>.

133 Interviewee 1 and 2.

134 Interviewee 2.

135 Interviewee 1.

136 Interviewee 1 and 2.

137 Interviewee 2.

138 VOCIARE online survey results.

139 Interviewee 2.

140 Interviewee 1.

## ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

*Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.*

*Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.*

Article 26 of Directive 29/2012 establishes that Member States must exercise adequate co-operation and co-ordination to improve the victims' knowledge about their rights and the accessibility to these rights.

The norm has not been transposed in the Italian judicial system and, for further clarification, please refer to the points discussed above in the sections related to Articles 8 and 9 of the Directive.

The Italian government, in the past few years, has initiated and sponsored some awareness-raising campaigns on victims' rights<sup>141</sup>: the problem is that those initiative were mainly focused on certain types of victims, such as the ones of gender-based crimes.

<sup>141</sup> VOIARE online survey results.

## GOOD PRACTICES

- The Public Prosecutor at the Court of Trento formulates some operational and practical indications for the application of the Legislative Decree. 212/2015 which implemented the European Directive 29/2012:
  - the possible divergence between the figure of the victim of the crime and the figure of the injured person is highlighted (very appropriately);
  - practical rules are set for the assessment of the relationship of cohabitation with the victim;
  - Practical rules on information and communication are given to the victim who addresses the authority. Practical rules are indicated to communicate to the victim the cases of legal aid against the State and to access information regarding the state of the procedure;
  - there is a need to inform the victim about possible alternative definitions of the procedure;
  - - practical directives are given in relation to the news to be given to the victim regarding the offender's status and his eventual evasion;
  - the notion of 'particularly vulnerable victim' is specified for practical purposes;
  - the need to avoid harmful repetitions of the victim's examination is recommended.
- The Public Prosecutor's Office at the Court of Tivoli, has also published a document aimed directly at victims of crime. With an accessible language the following topics are exposed:
  - the information that the victim has the right to acquire at the time of the complaint and the complaint;
  - the methods for filing the complaint and the lawsuit;
  - the places and offices where to lodge the complaint and the lawsuit;
  - the possibility - on request - to obtain a copy of the complaint or complaint filed;
  - the possibility of returning the lawsuit;

- the possibility of being assisted by a lawyer - even at the expense of the State;
  - the news regarding the acts following the filing of the complaint or the lawsuit;
  - the rights of the victim during the trial;
  - the types of testimonies that the victim can make (summary information, protected testimony, probationary incident, testimony and cross examination);
  - the system of protection for the victim in case of danger.
- On 18 March 2016, the Public Prosecutor's Office at the Court of Teramo drew up a series of directives (addressed to the various police authorities) concerning:
    - methods for receiving the complaint and verbalizing the offended person;
    - procedures for carrying out interventions at the domicile of the injured person;
    - instructions in case of a particularly vulnerable victim;
    - removal from the family home of the violent offender;
    - communication to the victims of the presence of anti-violence centers on the territory;
    - information to be provided to the victim provided for by the D.Lsg. 212/2015.
  - The Council of the Order of the Lawyers of Tivoli has published a dispensation addressed to the operators of the sector, titled "*Victimate in condition of particular vulnerability – Substantial and processual profiles*". This is an interesting document that sets out the following topics:
    - Supranational legislation and internal regulations;
    - Vulnerable victim: evolution of the concept;
    - First contact with the proceeding authority: information obligations;
    - Preliminary investigations: listening to the vulnerable victim;
    - Debate: listening to the vulnerable victim;
    - Precautionary measures: information obligations in favor of the victim.

- "*Victims and corporations: Implementation of Directive 2012/29/EU for victims of corporate crimes and corporate violence*" is a document drawn up by various subjects (Catholic University of Milan, Leuwens Instituut Voor Criminologie, Max-Planck-Institut). The document is dated July 2017. These are specialized guidelines for judicial police, prosecutor's offices and judicial magistrates, which contribute to the implementation of Directive 29/2012 for victims of corporate crime and corporate violence.

For further analysis of good practices, please consult links in footnote.<sup>142</sup>

<sup>142</sup> For further analysis of good practices, please consult these links:

[https://www.penalecontemporaneo.it/upload/1453138948Proc.\\_Trento\\_CIRC\\_2-2016.pdf](https://www.penalecontemporaneo.it/upload/1453138948Proc._Trento_CIRC_2-2016.pdf)

[http://www.questionegiustizia.it/articolo/l-avviso-alle-persone-offese-predisposto-dal-procuratore-di-tivoli\\_09-02-2017.php](http://www.questionegiustizia.it/articolo/l-avviso-alle-persone-offese-predisposto-dal-procuratore-di-tivoli_09-02-2017.php)

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[http://www.procurasiena.it/diritti\\_persone\\_offese/index.htm](http://www.procurasiena.it/diritti_persone_offese/index.htm)

The Public Prosecutor's Office at the Court of Siena has published on its website an exposition of the main points brought by the D.Lsg. 212/2015.

It should be noted that the presentation of the standard also includes a translation in English (Prosecutor's Office at the Siena Court - OFF PARTICIPATING INFORMATION) and a translation in French (Parquet de la République auprès du Tribunal de Sienne - INFORMATIONS A LA PARTIE LESEE).

<http://www.procura.trieste.giustizia.it/Documenti/Documenti.aspx?idarea=3>

The Public Prosecutor's Office at the Court of Trieste has published on its online site a summary of the innovations brought by the D.Lsg. 212/2015.

It should be noted that the synthesis also includes a pdf translation in Albanian (Prokura and Republikes prane Gjykates Shkalles if it appears to be), in Arabic, in French (Parquet du Tribunal), in English (Public Prosecutors' Office, Court of Justice), in Romanian (Procuratura Republicii de pe langa Tribunalul), in Russian (ПРОКУРАТУРА РЕСПУБЛИКИ ПРИ СУДЕ ОРДИНАРНОЙ ЮРИСДИКЦИИ), in Serbo-Croatian (JAVNO TUŽITELJSTVO KOD RED OVNOG SOUTH U), in Slovenian (DRŽAVNO TOŽILSTVO PRI REDNEM SODIŠČU), in Spanish (FISCALIA DEL TRIBUNAL), in German (STAATSANWALTSCHAFT BEIM LANDGERICHT).

[www.procura.teramo.it/documentazione/D\\_9262.doc](http://www.procura.teramo.it/documentazione/D_9262.doc)

[http://www.victimsandcorporations.eu/wp-content/uploads/2018/04/VictCorp\\_Dir2012.29.UE\\_LINEE-GUIDA-p.g.-p.m.-e-giudicanti\\_2017.pdf](http://www.victimsandcorporations.eu/wp-content/uploads/2018/04/VictCorp_Dir2012.29.UE_LINEE-GUIDA-p.g.-p.m.-e-giudicanti_2017.pdf)

# GAPS, CHALLENGES, AND RECOMMENDATIONS

Speaking of practical implementation of Directive 29/2012 is, in some respects, inadequate. In fact some clarifications are necessary.

There are self-executing directives that are sufficiently detailed in the contents, which, therefore, do not require any implementation provision by the Member State. These directives have the power to affect directly the legal sphere of the individual citizen. This direct effect develops only in a vertical sense (in the relationship between the individual and the defaulting State) and not horizontally (in the relations between individual subjects) and can entail the responsibility of the State for failure to transpose the Directive with the consequent obligation to compensation for the damage suffered by the individual as a result of the breach.

The Directive 29/2012 is not self-executing; and therefore requires an internal transposition law. In the Italian case, as we know, the transposition took place with the instrument of the D.Lsg. 212/2015.

In this sense, after analysing the practical implementation of the Victims' Directive, researchers were able to identify certain gaps/challenges, which are summarized as follows:

- a) failure to implement organic legislation that can recognize and support centers for assistance to general victims of crime;
- b) practical risk that the police and prosecutor offices are not yet able to provide, in fact, to provide all the information required by Legislative Decree 212/2015;
- c) practical risk that the victims are not yet able to communicate effectively with the police and prosecutor offices; especially to dialogue to communicate the real needs and the real fears;
- d) practical risk that the judicial structures are not always adequate to accommodate the victims, and to provide separate spaces between the victim and the offender;
- e) practical risk that the police and prosecutor's offices are not always able to understand the dangerous situations in which the victims are victims;

f) Practical risk that the police and prosecutor's offices are not aware of the centers for the assistance of the general victims of crime present on the territory.

Despite the shortcomings noted, it should be noted that Directive 29/2012 and Legislative Decree 212/2015 pose several interesting challenges:

- a) challenges for police officers and prosecutors, so that they can adapt and improve their victim victimization and victimization skills;
- b) challenges, always for police officers and prosecutors, so that they can start an interaction and collaboration with the centers for the assistance of the general victims of crime present on the territory;
- c) challenge for the Association for the Assistance to the Victims of Crime so that it can constitute an interlocutor with the public authority (Ministry of Justice, police, magistrates) to start collaborative projects; so that it can implement and increase the network of victim assistance centers; finally, so that - even in collaboration with experts and academics - it can draw up lines of reference (containing good practices) that can be used in hosting victims.

On this regard, researchers were able to draw certain recommendations, such as:

- a) implement and implement an organic regulation that can recognize and support centers for assistance to generic victims of crime;
- b) strengthen the possibility for them to communicate effectively with the police and prosecutor offices; especially to dialogue to communicate the real needs and the real fears;
- c) adapt the judicial structures so as to accommodate the victims, and provide separate spaces between the victim and the offender;
- d) adapt the police and prosecutor's offices so that they are able to understand the situations of danger in which the victims are victims;
- e) ensure that the police and prosecutor offices are aware of the centers for the assistance of general victims of crime in the territory.

# CONCLUSION

The present national report, completed within the context of project VOciare, aimed at assessing the practical implementation of the Victims' Directive in Italy, through a desk research complemented by the collection of surveys and the conduction of interviews with different groups of stakeholders working in the criminal justice system – police officers, prosecutors, lawyers and victim support officers. The present report analysed both the transposition of the Victims' Directive into national law as well as the practical implementation of each of the rights established in the same Directive, identifying good practices and shortcomings.

Conducting a critical, conclusive assessment of the research carried out involves the adoption of different points of view and different perspectives:

- a) the formal perspective, on the basis of which it is necessary to bear in mind that the transposition of Directive 29/2012 passes through Legislative Decree 212/2015;
- b) Legislative Decree 212/2015 incorporates in Italy only a part of the contents of Directive 29/2012;
- c) the part of the Directive that has been transposed is that of a more strictly legal and judicial nature: in particular the part that refers to the preliminary investigation phase;
- d) during the preliminary investigations, the victim is entitled to obtain information, at his request, regarding the methods of the denunciation, the status of the proceedings, the alternative definitions of the procedure, the status of libertatis and the escape of the offender. However, it remains to be ascertained how and in what form these informational contents are actually given to victims;
- e) the need for the police and prosecutor offices to be aware about victims' support centers working within their territory;
- f) the need to develop restorative justice practices.

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# APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

#	Name	Institution	E-mail	Phone #
1	Fabrizio Giorcelli	Rete Dafne Torino	giorcelli.fabrizio@libero.it	338 3921252
2	Vera Cuzzocrea	Centro Ascolto Tivoli	vera.cuzzocrea@outlook.it	338 8211256



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