

GOOD PRACTICES FOR PROTECTING VICTIMS

inside and outside the criminal process

*Strengthening the position of victims of crimes
within the European criminal justice systems*

BOOKLET N. 2
FEBRUARY 2013 - MAY 2013

Monitoring and updating of the Research Project

Founded by
European Commission
(JUST/2011/JPEN/AG/2901)



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www.protectingvictims.eu

Università degli Studi di Milano



Università degli Studi di Bologna



Universidad de Sevilla



ARPE



WHAT'S NEW...

Welcome to the new members of the action, awarded with two research fellowships within the Project

UNIVERSITY OF BOLOGNA

Dr. Guido Todaro
Senior Researcher

UNIVERSITY OF MILAN

Dr. Martina Cagossi
Junior Researcher

**We began the discussion on future collaborations
with**

THE COURT OF MILAN

THE REGIONAL PRISON AGENCY OF LOMBARDY

THE PUBLIC PROSECUTOR'S OFFICE OF MILAN

THE MUNICIPALITY OF MILAN

**in order to improve the discussion with these eminent Institutions
that are extremely close to victims in the everyday life**

This is our second booklet, with a first partial summary of our Conference held in Bologna.

Other important contributions on the topics discussed during the Conference will be uploaded on our website.

We will publish the other booklets during the two years of research, in order to offer frequent updating on the development and activities of the Project.

SUMMARY

- A brief summary of our first Conference held in Bologna on April 12th 2013 p. 4
- The morning session p. 6
- The first afternoon session p. 9
- The second afternoon session p. 10
- *Agenda* p. 12

Crime is a wrong against society as well as a violation of the individual rights of victims.

La criminalité est un dommage infligé à la société et une violation des droits individuels des victimes.

Un reato è non solo un torto alla società, ma anche una violazione dei diritti individuali delle vittime.

El delito constituye un injusto contra la sociedad y una violación de los derechos individuales de las víctimas.

Recital §9 of Directive 2012/29/EU

This publication has been produced with the financial support of the Criminal Justice Programme of the European Union. The contents of this publication are the sole responsibility of the members of the project and can in no way be taken to reflect the views of the European Commission.

A BRIEF SUMMARY OF OUR FIRST CONFERENCE

HELD IN BOLONIA, ON APRIL 12TH 2013

The great concreteness of victims: “best practices” and normative developments in the wake of the Directive 2012/29/UE on the rights, support and protection of victims of crime

Study seminar organized within the research project funded by the European Commission in the framework of the Criminal Justice programme (JUST/2011/JPEN/AG/2901)

Introduction

The Conference has taken place on April 12th 2013 at the School of Law of the Bologna University, which, together with the Universities of Milan and Sevilla and ARPE (Association de Recherches Pénales Européenes) of Paris, forms the research group that is working on the European project.

This conference represents the first significant meeting in Italy meant to address the content of the Directive on the rights, support and protection of victims of crime and its impact on national legislation.

There has been a big affluence of public and the audience was diverse, formed by some judges, many lawyers, some students and eventually people who were – in different ways – involved with the territorial associations that deal with the protection of crime victims.

The reports have been many and all of them demonstrated a very high level in quality, in research (which has seen the contribution of distinguished academics), as well as in the ability to propagate experiences and knowledge developed on the field.

Both the morning sessions have been chaired by prof. Giulio Illuminati, full professor of Criminal procedure at the University of Bologna and former Director of the Department of Juridical Sciences “Antonio Cicu” of the same city.

The first morning session

In particular, the first session has been committed to the reconstruction of a “European statute of victim”.

Previously, however, a general picture of the problems at stake was set forth, as well as an overall workplan of the research group thanks to prof. Luca Lupária, project coordinator and supervisor of the Milan unit.

It followed a report of prof. Maria Virgilio, supervisor of the LEXOP research (for the protection of women victims of violence), the results of which have been illustrated.

To follow, the intervention of prof. Silvia Allegranza – supervisor of the Bologna unit – and prof. Mitja Gialuz from the University of Trieste, who have explained numerous aspects connected to the safeguard of victims, arising in particular from the Directive 2012/29/EU.

At last, the intervention of dott. Stefania Martelli, member of the Bologna unit, has dealt with the Lanzarote Convention on protection of children against sexual exploitation and abuse (and the related Italian ratification law), as well as the Istanbul Convention on preventing and combating violence against women.

The second morning session

It offered more a comparative perspective, focusing on the peculiarities of different national legislation on the protection of victims.

In particular, more light was cast upon the French system, explained by prof. Raphaële Parizot, supervisor of the Paris unit, and the Spanish system, presented by prof. Juan Burgos Ladrón de Guevara, supervisor of the Sevilla unit, and dr. Ana Ochoa Casteleiro from the Spanish university.

Afterwards, prof. Michele Caianiello (University of Bologna) and Marco Scoletta (University of Milano), discussants of the debate, succeeded in resuming the common aspects and the clashes existing between the Spanish and the French systems, as well as the ones between the Italian legislation and the European standards outlined in the above-mentioned Directive.

The afternoon sessions have been chaired by prof. Renzo Orlandi, full professor of Criminal Procedure at the Bologna University.

The first afternoon session

In the first afternoon session, Dr. Guido Todaro, member of the Bologna unit, and

prof. Hervè Belluta (University of Brescia) presented a critical analysis of the Italian system in the light of the European legislation, underlining its pros and cons.

The second and last session, on the other hand, presented more a pragmatic approach.

The first speaker was Alessandro Gamberini, professor at the Bologna University and also practicing for many years as a lawyer in the same city. Thanks to his great experience in the field, he illustrated the main difficulties related to victim protection within the criminal trial from a practical perspective.

The second afternoon session

Last but not least, three speakers representing the civil society stepped-in: Dr. Giuditta Creazzo and Dr. Roberto Poggi from organizations that are active in granting support to victims of crime.

Dr. Luigi Fadiga, finally, explained his task as the Emilia-Romagna regional Ombudspersons for Youth and Adolescence.

Final considerations

As a conclusion, it can be said that the whole conference has been very profitable. In fact, it allowed to identify several critical profiles that need to be redressed, both on a legislative and a practical perspective. This has been possible thanks to the open debate developed among different kind of professions, from scholars specialized in various fields to lawyers and representatives of the civil society.

THE MORNING SESSION
THE RECONSTRUCTION OF A “EUROPEAN STATUTE OF VICTIM”

Status of the art and new perspective on the role of the victim in pre-trial phase: the directive 2012/29/UE

Abstract of the speech delivered by Dr. SILVIA ALLEGREZZA – University of Bologna*

Since the approval of the framework decision 2001/220/JHA, the protection of the victim within the criminal justice system represents a priority for the implementation of a common Freedom, Security and Justice Area within the EU.

Ten years have past from that framework decision and the EU has twice affirmed how pivotal the role of the victim is (both in the Stockholm program of 2010 and in the Budapest roadmap of 2011).

The protection of the victim has recently been increased with the adoption of the Directive 2012/29/EU.

This directive confers to the victim new and concrete tools in the criminal process. First, the new legal framework has a direct impact on the role the EU rules can play within national systems.

According to direct effect doctrine, many provisions may have a direct effect since the adoption of the directive and without waiting for the implementation at national level.

The directive confers several critical rights to the victim:

- new rights concerning the information the victim must receive before, during and after the criminal proceedings; the directive

states the timing and the contents of the right to information, asking the national systems to offer adequate and professional service rights in order to help the victim to deal with the criminal justice system.

- a stronger role on evidence, especially during the pre-trial investigation.

- a precise legal framework for the right to appeal against the decisions adopted during the criminal proceedings.

- a new European framework for restorative justice and mediation.

**Prof. Silvia Allegrezza is the director of the research unit of Bologna. Her team has successfully organised the entire event.*

Other important contributions to the Conference have been made by Prof. Parizot and prof. Burgos Ladrón de Guevara, directors of the French and the Spanish units.

The Directive 2012/29/UE: rights and powers. From vulnerability to “special attention”: the rights and cautions in the field of criminal evidence

Abstract of the speech delivered by Dr. MITJA GIALUZ – University of Trieste

Since the Framework Decision 2001/220/JHA, the protection of the victim has been a priority in the European construction of the Freedom, Security and Justice Area. After a decade, with the adoption of the Stockholm Programme (*An open and secure Europe serving and protecting citizens*, in the Official Journal of the European Union, 4.5.2010, C-115, 1) and the Budapest Roadmap (*Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings*, in the Official Journal of the European Union, 28.6.2011, C-187, 1), the European Union has reaffirmed the centrality of the victim and has adopted several legal instruments on this issue (Directive 2011/36/EU, on preventing and combating trafficking in human beings and protecting its victims; Directive 2011/93/EU, on combating the sexual abuse and sexual exploitation of children and child pornography; Directive 2011/99/EU, on the European protection order; Directive 2012/29/UE, establishing minimum standards on the rights, support and protection of victims of crime).

Among them, the Directive 2012/29/UE has remarkable importance because it establishes the “horizontal framework” and recognizes to all victims four fundamental rights regardless of the type of offense or the circumstances or the place where it was committed. They are: the right to information, the right to assistance, the right to participation and the right to protection.

The report will look at the right to protection of those who, throughout the European legislation, have been considered as “supervictims”, i.e. the “vulnerable victims”.

Regarding to these victims, the Directive will be analyzed from three different points of view.

First of all, it will underline the outstanding innovation concerning the concept of vulnerability: the Directive abandoned the traditional “static” idea of vulnerability and replaced it with a dynamic notion of “victim with specific protection needs”.

Secondly, it will refer to the pivotal mechanism of the individual assessment (article 22), which seems decisive both for the *an* of the treatment and for the *quomodo*.

Thirdly, it will focus on the legitimacy of specific treatments for the vulnerable victim which end up limiting the rights of defense of the accused (and especially his/her right to confrontation).

From these three points of view, the report will attempt to provide a brief evaluation of the innovative profiles and the shortcomings of the Directive, with particular attention for the perspective of its implementation in the Member States.

The substantive and procedural aspects of the two Conventions adopted by the Council of Europe in Lanzarote and Istanbul

Abstract of the speech delivered by Dr. STEFANIA MARTELLI – University of Bologna

In recent years, at the supranational level, many laws have been enacted aimed at protecting those who are in a position of weakness due to mechanisms of oppression, which are, in part, rooted in the culture and traditions of people (one may think of the so called “violence of gender” perpetrated by men against women, or domestic abuses), and, in part, caused by modern mechanisms of globalization and by the increasing use of technologies in communications. These factors affect, in particular, the serene development of the personality of the youngest, especially children.

As regards the first aspect, it is worth mentioning The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), adopted on May, 11th 2011. The Convention has not been enforced yet, because it has been ratified only by 3 States so far (even though it has been signed by 26 Countries).

The Italian Parliament is currently discussing a bill, approved by the Council of Ministers in December 2012, in order to ratify the Convention. The aim is to promote gender equality and the emancipation of women from their traditionally subordinate position, which has led to many episode of violence (such as honour murders, genital mutilations, domestic violence, rapes and coerced marriages).

The Convention regulates four areas of intervention: prevention, assistance, information and repression (through a series of crimes which the contracting

States are called to introduced). Finally, it establishes an *ad hoc* body (GREVIO), which will monitor the implementation of the Convention.

As far as the second aspect is concerned, the Council of Europe, on July, 12th 2007, adopted the Lanzarote Convention, which has been ratified by Italy with Law n.172 of October, 1st 2012. The Convention calls the States Parties to harmonize their legal systems, amending - when necessary - national criminal law concerning the fight against all forms of exploitation and sexual abuse to children.

The areas of intervention are basically three: prevention of trafficking, prosecution of offenders and protection of victims.

The law adopted by the Italian Parliament in ratifying the Convention contains a number of interesting - though sometimes questionable - innovations: from the introduction of new crimes (including “incitement to acts of pedophilia and child pornography” and “child grooming”), to the increase of penalties for certain offenses (such as “mistreatments of family members and cohabitants”). Moreover, the Convention contains some innovative provisions regarding the aggravating circumstances, seizure of goods and penalties.

As far as the procedure is concerned, some novelties have been introduced in respect to the so called *incidente probatorio* and to interviews with children, which shall now be conducted at the presence of an expert in child psychology or psychiatry.

THE FIRST AFTERNOON SESSION:
A CRITICAL ANALYSIS OF THE ITALIAN SYSTEM
IN THE LIGHT OF THE EUROPEAN LEGISLATION

Problematic issues about protection of injured persons: the Italian case-law

Abstract of the speech delivered by Dr. Guido Todaro – University of Bologna*

The Report will examine the Italian legislation on the protection of the victim, focusing on the more problematic aspects.

According to the topic, the reference model will be Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

In particular, the report concerns the victims of sexual offenders. Crimes related to sexual violence create a great social alarm.

Taking the criminal evidence law into account from the victim's point of view, it will be necessary that States ensure that all interviews of victims are conducted without unjustified delay from the complaint made to the competent authority.

In the Italian judicial criminal system, this objective is pursued by so called "incidente probatorio", that allows to gather evidence during pre-trial investigations.

However, this institute has problematic aspects as well.

For instance it does not provide full protection to victims: for example, they

cannot directly appeal to the judge for its application.

The victim in the Italian criminal proceedings, on the other side, seems to be adequately protected against the attorney's decision not to prosecute an offence during pre-trial investigation.

This objective is pursued thanks to a series of rights recognized and guaranteed to victims in the proceeding called "archiviazione", that have been increased by the Italian Supreme Court of Cassation's decisions.

The report, in short, concerns the role of victims in the Italian criminal justice system and whether they can actively participate in the criminal proceedings or not, and with a look to the main decisions of the Italian Supreme Court of Cassation.

**Guido Todaro has been awarded with a research fellowship within this project.*

His presence will enrich the research unit of Bologna.

THE SECOND AFTERNOON SESSION: THE CIVIL SOCIETY AND ITS OPERATORS

Why doesn't she press charges? The needs of women victims of intimate partner violence

Abstract of the speech delivered by GIUDITTA CREAZZO - Association Casa delle donne per non subire violenza

Intimate partner violence frequently goes unreported and even when this is not the case, often its results consists in dismissal or acquittal.

The high proportion of cases dropping out the system raises the question of impunity of violent male behaviours against women, a phenomenon that has been completely ignored for a long time.

In recent years, many things have changed especially due to the long-term efforts of women's associations all around the planet, aimed at increase the criminal persecution against violence of gender.

However, the new attention given to the problem has frequently just resulted in questioning victims' choices and behaviours as dysfunctional, inadequate or inappropriate every time they do not denounce their violent partner. But one can agree to this approach only if pressing charges against the perpetrator and sustaining prosecution can be considered the only straight forward rational decision in all cases of intimate partner violence.

On the contrary, approaching the problem from a victim's perspective can reveal quite a different picture.

In most of the situations, in fact, victim's choice of pressing charges against the

violent partner strongly depends on the level of protection that the legal system can afterwards guarantee, as well as the consequences of the choice on other relevant persons (children, family members, even the violent partner, and others) and on the relationships itself. Where the system resources of formal and informal support are inadequate, not pressing any charge against such offences could be quite an understandable behaviour.

The uncertainty and ambivalence of the responses given to victims, in fact, can strongly influence the decision making process of reporting violent episodes.

In order to increase victims empowerment and hold the perpetrators accountable for their behaviours, what is required is a flexible approach that takes into account the complexity of the situations and the variable needs and conditions of victims of intimate partner violence.

As stated by E. Stanko *"Different women want different kinds of support"*.

How to give support to male perpetrators of violence against women

Abstract of the speech delivered by ROBERTO POGGI, Association Cerchio degli uomini – Association MaschilePlurale

We report the experience of the Association "Circle of men" as part of a project developed in cooperation with the Province of Turin and aimed at identifying pathways able to prevent violence against women in intimate relationships.

Having this goal, all interventions realized are therefore addressed to physical, sexual and psychological male offenders or at men with some kind of tendency in that field.

The service is run by three experts of the Association who have a minimum of four-year training in counseling, especially regarding violence against women and help-line telephone. Moreover, the training is continuously update with active participation at seminars, workshops and conferences on the topics.

The work is divided in four stages: telephone reception, individual interviews of orientation, sharing groups with active methods, and when necessary, cooperation with the local services.

Men can have access to the orientation interview through a phone call or they can be sent by other network entities. Through the interviews it can be decided if there is the need to send the perpetrator to local services or if it is possible to assist him with special groups that work analyzing critical situations, and sharing and comparing them.

In these groups we work with personal stories, experiences and emotions.

In doing so, several dynamic methods are used, such as activation techniques, role

playing games, movies, lectures, and autobiographical writing laboratories.

This way facilitates the expression and recognition of emotional experiences, especially of anger and fear, and help in improving techniques related to their control.

In the groups, a supervisor introduces some specific topics, dealing with minimization, denial, projection, recognition of women without reduce them to objects, empathy towards the victim, signs of escalation of anger and violence, possibilities to change, values and life style.

In fact, even if the problem of violence affects millions of men, only in few cases that is due to a pathology. On the contrary, what emerges more often is the relevance of some social schemes, like the widespread patriarchal and macho culture, as well as the influence of personal past experiences that had brought men to undervalue people, including the offender himself.

This multidisciplinary approach has helped these men to get a greater self-awareness, increasing their capacity to manage conflicts and emotions and to develop empathy in relationships. In many cases, that led male offenders to remarkably change their perception about other people, including themselves.

So far, we can say that this preventive system – still experimental- is producing excellent results. The next step is to increase the number of cases treated, through further tests and evaluations.



AGENDA

Titolo

Second Conference of the Research Project



FRIDAY

8TH NOVEMBER 2013

9 a.m./7 p.m.

UNIVERSITY OF SEVILLA

Law School

For more information about the Conference and the registration procedures,

please visit our website

www.protectingvictims.eu

or contact us at info@protectingvictims.eu