



Country report on the transposition of Victims' Directive in Italy

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Executive summary

The present report is part of the project E-PROTECT which has the general aim to reinforce the application of the Directive 2012/29/EU in the cases of child victims of crime. The goal of the report is to evaluate the national legislation transposing those articles of the Victims' Directive into Italian legislation, which concern the protection of child victims of crime.

In the course of E-PROTECT, such in-depth reviews were carried out in the five partner countries to this project, namely Austria, Bulgaria, Greece, Italy and Romania. These reports serve as cornerstones for further assessments and foundation for seminars and virtual events to be held in the course of the project.

The present work is structured in four main sections. It begins with an introductory paragraph on how the child protection system is designed and applied in Italy followed by a brief picture of the transposition of European legislation regarding crime victims in the Italian legislative framework. The national legislative framework is then presented by providing an overview of the legislative situation in Italy regarding the protection of child victims. The report follows with the legal evaluation of the national transposing measures for Directive 2012/29/EU. This part focuses specifically on the Directive that the E-PROTECT project aims at reinforcing through the assessment of the provisions of the national transposition legislation based on qualitative analytical parameters shared among the partnership. Finally, the final chapter contains some concluding findings and observations relevant for possible processes of reform and improvement in the specific field of protection for child victims of crime.



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Abbreviations

ASL: Local Health Services

CC: Civil Code

CP: Criminal Code

CPP: Criminal Procedure Code

CRC: Convention on the Rights of the Child

DCI: Defence for Children International

DPR: Presidential Decree

EC: European Commission

EU: European Union

JHA: Justice and Home Affairs

UN: United Nations



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1. Methodological considerations

The general scope of the E-PROTECT project is to enhance the protection of child victims of crime rights, as granted by Directive 2012/29/EU, in five Member States (Austria, Bulgaria, Greece, Italy and Romania).

With the aim of improving the compliance of national legislations and practices with European directives and standards, the project foresees a first research phase that attempts to:

1. Review the level of transposition of Victims' Directive not only in the partner countries, but in the other MS as well;
2. Examine the existing methodologies on individual needs assessment of child victims of violence;
3. Identify best practices and working methods that could be multiplied on a pan-European level.

These aspects will inform the other set of interlinked activities that will be implemented in the framework of the E-PROTECT project, in order to ensure appropriate and relevant results.

In particular, the present report aims at analysing the national legislative framework in order to assess the level of transposition of the Victims' Directive in Italy, from a child rights-based perspective. The report has been drafted following the methodological indications of the leading partner, contained in a methodological protocol specifically elaborated for this research. According to it, the study has used the following qualitative criteria to conduct the assessment:

- a) Comprehensiveness of national transposition legislation;
- b) Conformity of national transposition with the Victim's Directive;
- c) Accuracy and appropriateness of the national transposition measures;
- d) Comprehensibility, unambiguousness, clarity of national provisions.

The analysis has also included the official views and critiques raised by relevant public and private stakeholders and has also taken into account the information given by the professionals interviewed¹ in the framework of the Country report the individual assessment methodologies of child victims of crime in

¹ Till January 2018 a total of 3 interviews were conducted with: a responsible of a private victim's support service, a youth lawyer and a responsible of the medical emergencies department of a pediatric hospital.



Italy. These components have allowed the research to get an overview of the practical implications of the transposition.

2. Introduction

Italian legislation on child victims' protection is composed of civil and penal provisions scattered in a great number of laws. It is fragmentary both because it has been established at various times, by adding subsequent provisions and the effects of decentralization has created patchy regional systems for the care and protection of children (DCI Italy, 2014). Regions are entitled to provide for local provisions aimed at the protection of children against abuse and neglect. Even if some regions have promulgated guidelines, protocols and monitoring mechanisms for the management of child abuse and neglect, there are neither national plans nor tools to address the phenomena in a coordinated and harmonized way. As in many other fields, the process of regionalization (derived from the reform of Title V² of the Italian Constitution) caused a fragmentation of provisions. The fragmented territorial variability of initiatives adversely affects the substantial and detrimental increase of gaps between the Northern and Southern regions of the country in terms of availability and accessibility of resources, in particular in the field of the therapeutic care (psychological, psychiatric and psycho-social) of children who suffered any form of abuse or neglect (DCI Italy, 2014).

As observed for the legislative provisions, the level of attention towards child abuse in Italy is also extremely fragmented. The factors involved are only apparently geographical (according to the stereotype which radically differentiates the North from the South) because a major role in this context belongs to issues related to culture, level of organization of social services, availability of funds and the level of synergy reached by the different institutions and services in charge of the management of cases of children who are abused and neglected.

Another weakness regards data collection and management. Italy does not have a national agency collecting data on child victims' who are referred to social services for assistance and protection from

² With Constitutional law n. 3 of 18 October 2001 chapter V, part two of the Italian Constitution has been completely reformed. It lays down rules on regions, provinces and municipalities. The new institutional text operates a new and different distribution of legislative powers between the State, regions and local authorities.



situations of risk, danger and threat, or children who need help for situations not immediately recognized as crimes, such as neglect or psychological abuse. The only available official data derives from the reporting of abuses by judicial authorities, or from those regions where a monitoring system has already been implemented. As a consequence, the accessible data is fragmented and not representative of the current national dimension of the phenomenon and therefore, it cannot properly be used to inform prevention programmes and policies.

From a criminal law perspective, Directive 2012/29/EU - implementing one of the main points of the Stockholm Programme³ - establishes minimum standards for rights, support and protection of victims of crime.

The Victims' Directive has replaced the **Framework Decision 2001/220/JHA**⁴, which has never been completely implemented by Italy and has reviewed and incorporated the principles set out in this Decision. The aforementioned Framework Decision 2001/220/JHA was the first European Union legislative instrument on the standing of victims in criminal proceedings. It provided a first definition of "victim" as a natural person who has suffered harm, including physical or mental injury, emotional suffering, economic loss, directly caused by acts or omissions that constitute a violation of the criminal law of a Member State. The Framework Decision required that *"each Member State shall include in its criminal justice system an appropriate and effective role of victims by providing them with a duly respectful treatment of his/her personal dignity during proceeding"*⁵.

Subsequently, **Directive 2004/80/EC** relating to compensation to crime victims was enacted with the same aim to protect the personal integrity under the same conditions as nationals of all Member States. The Directive establishes a cooperation system among Member States to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of the internal systems provided by the Member States on compensation to victims of violent intentional crime committed in their respective territories.

³ The Stockholm Programme, adopted by the European Council in December 2009, provides a framework for EU action on the issues of citizenship, justice, security, asylum, immigration and visa policy for the period 2010–2014. It calls for a coherent policy response that goes beyond the area of freedom, security and justice. It includes external relations, development cooperation, social affairs and employment, education and health, gender equality and non-discrimination. https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_stockholm_programme_-_an_open_and_secure_europe_en_1.pdf (15.01.18).

⁴ <http://www.protectingvictims.eu/upload/pages/16/Framework-decision-2001-220.en.pdf> (15.01.18).

⁵ Art. 2 Framework Decision 2001/220/JHA.



Furthermore, the Directive ensures victims of a State other than that of the place of commitment of the crime the same access to the compensation scheme, moves from the assumption of the existence of such internal compensation. While respecting the principle of subsidiarity, the Directive does not indicate the crimes for which this compensation should be applied, referring to the national legislation for its identification⁶.

Directive 2004/80/CE has been only partially transposed into the Italian system through the Legislative Decree n. 204/2007. The partial nature of the Italian implementation is related to the non-compliance with art. 12, paragraph 2, of the Directive, which provides that: "*All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims*". This provision is still unimplemented in the Italian system. Italy recognizes compensation only to victims belonging to certain categories of offences, considered particularly severe (as for example mafia, terrorism, etc.)⁷. In 2007 the European Commission started an infringement procedure against Italy for failure to comply with the Directive 2004/80/EC (sentence 29 November 2007, C-112/07, Commission vs. Italy)⁸.

Further provisions relating to victims of crime are encompassed in **Directive 2011/36/EU** replacing the Framework Decision 2002/629 /JHA. It provides for minimum standards on the definition of criminal offences and sanctions in human trafficking by introducing common provisions to the countries of the Union.

In this context the **Directive 2012/29/UE** has been enacted. According to it, "*crime is a wrong against society as well as a violation of the individual rights of victims. A person should therefore be considered*

⁶ We must, in fact, remember that in 2004 the European Community had no competence in criminal matters (it is only as a result of changes in the Lisbon Treaty that even the third pillar, that is, policies relating to justice and Home Affairs, have become competence of the Union. For this reason, after the Treaty of Lisbon, framework decisions are replaced by Directives).

⁷ Camera dei deputati – Servizio Studi XVII legislatura, *Il sistema di protezione delle vittime: principi sovranazionali e normativa nazionale*.

⁸<http://rivista.eurojus.it/incompleta-trasposizione-della-direttiva-sullindennizzo-delle-vittime-di-reato-la-responsabilita-dello-stato-italiano-allattenzione-dei-tribunali-nazionali-e-ancora-una-volta-dell/?print=pdf> (15.01.18).



*to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between them*⁹.

3. National legislative framework for transposing Directive 2012/29/EU

In order to better understand the context in which the European Directive develops we will briefly outline the Italian situation prior to the transposition process of the Directive. In recent years the national legislator has in fact introduced different forms of protection for more vulnerable victims. However, it is worth mentioning that Italy has ratified the UN Convention on the Rights of the Child (CRC) (Law n. 176 of 27th May 1991) and the two Optional Protocols to the Convention (Law n. 46 of 11th March 2002), therefore through the law of ratification the CRC forms part of domestic legislation. Moreover, Law n. 112 of the 12th July 2011 established the National Ombudsman for Childhood and Adolescence (Autorità Garante per l'Infanzia e l'Adolescenza) with the mandate of promoting the full application of the CRC and of other legal instruments on children's rights, as for example: listening to children; promoting the respect of children's rights to full access to health care and education; signalling emergency cases as well as the measures to be adopted; formulating opinions on legal matters, including the National Plan on Childhood and the National Report to the CRC Committee; the realization of studies and researches, the request of information and data to public institutions, the promotion of visits and inspections upon authorization of the judicial authorities (DCI Italy, 2014).

3.1. Standing of child victims of crime in criminal proceedings at national level (historical perspective)

The original provisions of the Italian Criminal Code - articles 571, 572 and 593 - sanction violations to family obligations, abuse of corrective measures, ill treatment and the abandonment of children. For these types of crimes, prosecutors have the power to act on their own motion. In the Italian civil law system,

⁹ Recital nr. 9 and 19 of the Victim Directive.



child victims of physical, emotional or sexual abuse are protected through an integrated system of rules, which establishes serious sanctions for parents, in cases where their conduct is detrimental to their children. Over the years, several regulatory interventions have introduced a specific legislation for the protection of children and adolescents from sexual violence and sexual exploitation (DCI Italy, 2014).

With the internal law 172/2012, the Lanzarote Convention on the protection of Children against sexual exploitation and sexual abuse¹⁰ has been transposed into the Italian legal system.

As direct consequence the Italian criminal Code has foreseen:

- The importance of assuring ***affective and psychological support for the child victims at every stage of the proceeding, by parents or other suitable persons chosen by the child, as well as by groups, foundations, associations or non-governmental organizations with proven experience in the field of assistance and support to victims. They have to be in the list of persons entitled to do so, with the consent of the minor, and allowed by a proceeding judicial authority. In any case the minor is ensured the assistance of juvenile services of the administration of justice and services set up by the local authorities***¹¹;
- That the police authorities that need to assume summary information should take advantage of an **expert in psychology or in child psychiatry**¹²;
- That victims of sexual abuse have the **right to access free legal aid** regardless of their income limits¹³.

The Decree-Law N. 93/2013 has implemented the protection of victims of domestic and gender violence, modifying and introducing into the Italian legal system the following provisions¹⁴:

- Aggravation of penalties whenever the crime of domestic violence is committed in presence of a minor (art. 572 c.p.);

¹⁰ Convenzione del Consiglio d'Europa del 25 ottobre 2007 per la protezione dei minori dallo sfruttamento e dagli abusi sessuali in <https://rm.coe.int/168046e1e1>.

¹¹ Art. 609-decies c.p.

¹² Art. 351, 362 c.p.p.

¹³ Art. 76 TU spese di giustizia (Legal costs Consolidation Act) .

¹⁴ Camera dei deputati – Servizio Studi XVII legislatura, *Il sistema di protezione delle vittime: principi sovranazionali e normativa nazionale*.



- Strengthening of protection measures such as removal from the family home and prohibition to approach the places habitually frequented by the victim;
- The right to access free legal aid for all the victims of domestic violence, regardless of income limits;
- Strengthening of forms of assistance and support to women victims of violence and their children through the reinforcement of social services, anti-violence and support centres.

Finally, the Legislative Decree No. 24/2014 has transposed the Directive 2011/36/UE on preventing and combating trafficking in human beings and protecting its victims. This provision has in particular anticipated some of the main principles of the Victims' Directive such as the importance of the victims' individual assessment, in particular of the most vulnerable persons such as minors, women and /or unaccompanied foreign minors and the presumption of minority if it is not possible to establish it exactly.

3.2. The transposition process of Directive 2012/29/EU in Italy

The Victims' Directive has been transposed in Italy by the Legislative Decree 15th December 2015, n. 212 (entered into force on the 20th January 2015, one month subsequent to the deadline given by the Directive itself). During the transposition process, the draft of the Legislative Decree has been positively evaluated by the Justice Commission of the Italian Parliament and enriched by numerous observations. The text approved by the Council of Ministers shows that it has largely taken into account the indications given, in particular those concerning:

- A more precise articulation of the concept of "vulnerability";
- The possibility to use audio-visual reports;
- The strengthening of the possibilities to conduct protected hearings¹⁵ for particularly vulnerable subjects.

The final legislative Decree is made up of only three articles and has modified and integrated several provisions of the Italian criminal procedure Code. We can briefly summarize the main changes as follows:

¹⁵ This type of hearing must be led by trained professionals, with particular caution and usually in a camera session.



- In case of **doubt on the major or minor age** of the victim, the Judge shall ask for an expertise, providing at the same time that where doubt persists despite the technical assessment, the victim shall be presumed to be a child in accordance with art. 24 of the Victims' Directive;
- The right to receive all the **information included in art. 4 of the Victims' Directive**. From the first contact with the competent authority, victims are offered different information¹⁶ with the aim to guide the victim not only during the proceeding but even before, during investigation. Art. 90-bis c.p.p. has however the shortcoming of not specifying the authority in charge to give all the information¹⁷;
- With regard to the **concept of vulnerability**, although the European Directive invited the national legislators to adopt a general protection of victims, whose vulnerability has to be evaluated on a case by case basis, considering the personal characteristics of the individual, as well as the type, nature and the circumstances of the crime (art. 22, par.2), the Italian legislator has, according to art. 90-quater c.p.p., adopted specific criteria (age, infirmity, psychological inferiority, type of crime) indicating the status of vulnerability of a victim. Only in a second step, however, nature and circumstances of the crime are to be considered when assessing the vulnerability of a victim. Within Italian law the vulnerability of a victim is therefore deducted if the abovementioned conditions occur, while the European Directive clearly requests the need of a case by case approach towards victims. Only child victims are presumed to be vulnerable by the European Directive (art. 22, par.4);
- In line with the principle to grant victims an effective participation, the **right to interpretation and translation**, prior foreseen only for the offender, has been also introduced for the victims (art. 143-bis c.p.p.).

¹⁶ We refer to all those foreseen by art. 4 of the Victim's Directive that have been completely transposed in art. 90-bis c.p.p.

¹⁷ Domenico Vispo, *La riscoperta del ruolo della persona offesa nel sistema processualpenalistico italiano: prime riflessioni a margine del d. lgs 212/2015*, page 5 in http://www.lalegislazionepenale.eu/wp-content/uploads/2016/02/informazioni_Vispo_2016.pdf (11.01.18).



4. Legal evaluation of the transposing measures for Directive 2012/29/EU

After having shortly analysed the transposition of the Directive in general, a more in-depth analysis will now focus on those provisions specifically directed towards the protection of child victims.

The first article, paragraph 2, of the Directive underlines the importance of the child's best interest that must be a primary consideration and shall be assessed on an individual basis. *“A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.”*

In the Italian legal system the victim, regardless of any situation of minority, mental or physical disability, is entitled the right to file a complaint or denunciation¹⁸ as well as the right to receive information about the concerned procedure. In these cases, the rights are exercised by those subjects that have parental responsibilities or that are in charge¹⁹ as a result of specific measures of the judge (Art. 120 c.p.)²⁰.

This general principle is further expressed in other more specific provisions such as in the right (of a child victim) to be heard, as foreseen in art. 10 of the Victim's Directive. This provision has been transposed in the Italian system in articles 351-262 c.p.p. stating that during criminal investigations the police authorities that need to assume summary information should call in an expert in psychology or in child psychiatry (when the victim is a child, but also a vulnerable person in general). Moreover, it is foreseen that a vulnerable victim (in general and not only if minor) does not have contacts with the offender and does not testify more than once. Same provisions apply when the investigations are carried out by the prosecutor.

Another provision specifically designated for children is article 21 of the Directive 2012/29/EU with regard to the right to protection of privacy according to which Member States shall ensure *“that competent*

¹⁸ In this particular case, the right to file a complaint or denunciation can be directly exercise by the child over the age of 14, without the need to be represented by his/her parents or a guardian.

¹⁹ We refer to the guardian in the case the parent/s cannot exercise the parental responsibility as do not exist or have lost it as the consequence of their behavior

²⁰Correlation table in http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0204_F001.pdf&leg=XVII#pagemode=none (12.01.18).



authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.” Different provisions are already present in the Italian legal system that pay a particular attention to this field. Art. 13 of the DPR n. 448/1988 expressly regulating the juvenile criminal proceeding states that “it is prohibited to publish and disseminate, by any means, news or images able to allow the identification of a minor anyway involved in the proceedings”. This provision applies in all the proceedings involving a child, also if different from the criminal one²¹. Furthermore, in the case of some offences (all those against the “person”, such as abuse, mistreatment, slavery, child prostitution and pornography, sexual abuse or human trafficking), the hearing always takes place in private when the victim is a child (art. 472 c.p.p.).

4.1. Individual assessment of victims to identify specific protection needs (article 22 Victims’ Directive)

Article 22 has been deeply analysed in the E-PROTECT Country report the individual assessment methodologies of child victims of crime in Italy and on which is therefore useful to refer to for a better understanding. In the present report, it might be useful to underline that the Italian legislation does not explicitly foresee and rule on the individual assessment procedure, but in practice every subject entering in contact with the child victim, as soon as becomes aware of the offence, has the duty to carry out the individual assessment in order to support the child and satisfy his/her protection needs.

Whenever a case of abuse and neglect is detected, its referral to the following institutions is compulsory:

- the Public Prosecutor at the Juvenile Court;
- the Juvenile Court; and
- the local authority, through the social services, (when there is the compelling need to separate the child from his/her parents due to distress situations or psychological/emotional troubles).

When parents are not able to exert their parental role, or are removed from their function of care, supervision and representation of the child, the local authority is in charge for the child’s guardianship.

²¹ Art. 50 Legislative Decree 30 June 2003, n. 196 (News or images of minors).



Local health services (ASL) must guarantee specialized diagnostic procedures and medical and psychological interventions for the child and his/her family (DCI Italy, 2014). Individual psycho-social and medical assessments are therefore conducted at the beginning of the proceeding in a pre-trial phase, as well as during it, whenever the judicial authority requires so.

A gap of the Italian system and of the Directive itself is that neither art. 22 of the European Directive, nor art. 90-quarter c.p.p. (in which art. 22 has been transposed) give any indications about the professional figure in charge to carry out the individual assessment and how the assessments should be conducted. As a consequence, practices and procedures significantly differ within the national territory. In Italy, guidelines and protocols on the management of cases dealing with child victims have been adopted, but only at regional level.

Without repeating concepts included in the E-PROTECT Country report the individual assessment methodologies of child victims of crime in Italy, we can say that the Victims' Directive, or at least its principles regarding the assessment of children and vulnerable victims and their protection measures, have been transposed and implemented by our national legislator even if important differences have been outlined.

First of all, the legal status of a victim of crime in the Italian legislation is not called "*victim*", but "*person who suffers the effects of a crime.*" Also, the aim of the ordinary criminal proceeding, is to establish the facts and punish the offender. In addition to this, there is a lack of a state system of victim support and a growth of different organizations/associations offering support to victims but facing a lot of difficulties due to the lack of directives at national level. As already mentioned, guidelines and protocols are therefore drafted internally or/and locally.

The Italian legislator could have also given more indications in terms of the subjects responsible to carry out the assessment and the procedure to follow.



4.2. Right to protection of victims with specific protection needs and child victims during criminal proceedings (article 23-24 Victims' Directive)

Taking into account the measures listed in article 23 and 24 of Directive 2012/29/EU, we have already analysed their application in Italian law in the Study on the individual assessment methodologies of child victims of crime (Deliverable 3.8-12).

As it often happens, although the legislator has fulfilled his aim to transpose the specific provisions, in practice the same provisions are not always applied or are applied differently all over the national territory.

The Italian criminal code states that during criminal investigations the *police authorities that need to assume summary information should take advantage of an expert in psychology or in child psychiatry* (when the victim is a child, but also a vulnerable person in general). Moreover, it foresees that a vulnerable victim (in general and not only if minor) does not have contacts with the offender and does not testify more than once. The same provisions apply when the investigations are carried out by the prosecutor²². However, in practice, according to what experts told us, it is not always possible to avoid contacts between the victim and the offender (separated entrances may not exist, hearings are not carried out on time and they might overlap)²³.

Other protection measures were established to comply with the Victims' Directive in the Italian legislation. During the "incidente probatorio" (hearing of the victim that allows the early taking of evidence, prior to the debate phase) the following measures apply:

- The adoption of a mirror glass;
- The conduct of the hearing in a place different from the court, such as specialized assistance centres or even at the victim's residence;
- Declarations documentation by phonographic or audio-visual instruments.

In addition to this, another measure specifically aimed at minors and foreseen in art. 24 of the Victims' Directive, is the audio-visual record of an interview conducted with a child (and with other vulnerable

²² Artt. 351, 362 c.p.p.

²³ E-PROTECT Country report the individual assessment methodologies of child victims of crime in Italy, page 20.



victims) which is, according to Italian law, always possible and the Judge is in charge to evaluate its necessity.

Children under the age of 18 are represented by their parents or guardian. Also, a special representative (called “*curatore speciale*”) is appointed to the child where the holders of parental responsibility do not exist, are precluded from representing the child or are in conflict of interest with him/her²⁴. Children aged over 14 are however entitled to take action on their own (right to file a complaint)²⁵.

All these measures tend therefore to protect the vulnerable victims and children in particular and reduce the risk to submit them to useless emotional and psychological pain as the consequence of repeated interviews and hearings without an effective investigative need.

4.3. Access and support from victim support services (article 8-9 Victims’ Directive)

Article 8 of the Victim Directive states that all “*Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings*”. Also, family members shall have access to the same support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

The Italian system is formally in compliance with this provision even if the legislation is quite fragmented. The Legislative Decree 15th December 2015, n. 212, introduced in the Italian criminal code art. 90-bis. This article regulates all the information that must be given to a victim and foresees also the duty to inform him/her about the health facilities existing in the area, the family-homes and the anti-violence and shelter centres.

- Anti-violence centres are centres providing psychological counselling, legal advice, support groups and training. They also promote awareness and prevention, they collect and process data, orient and accompany at work, collecting bibliographic and documentary material on issues of violence.

²⁴ Art. 90 – 121 c.p.p.

²⁵ Art. 120 c.p.



- Family-homes or shelter centres accommodate women and their children during a period of emergency.

Anti-violence and shelters centres are organized on a territorial basis, giving rise to a network of support for victims and involving law enforcement and emergency departments, social services and other actors sensitive to the issue. It is important, however, to underline that in Italy the access to national health services is granted to all persons present on the territory of the country, regardless if they are a regular resident or not, and despite their victim status.

Anti-violence centres, managed by associations and sometimes by public entities (regions, provinces, municipalities and health units) are also supported by public interventions: certain regional laws offer facilities to associations, sign conventions for the management of the centres, establish common work objectives and strategies. Access to the above mentioned anti-violence centres does not depend on the slope of a criminal proceeding²⁶. The gap lies therefore in the lack of a National social network that is organized only on local basis. This unfortunately does not allow the development and dissemination of shared and good practices²⁷.

4.4. Other relevant provisions

Other provisions that need to be considered are those related to the so-called Restorative Justice and to the training of practitioners. The Victim's Directive itself considers Restorative Justice as "*any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party*". Art. 12 of the Victims' Directive regulates the main conditions of this particular measure with the purpose to ensure that where such services are provided, safeguards are in place to ensure the victim is not further victimised as a result of the process. Such services should therefore have as a primary consideration the

²⁶Correlation table in http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0204_F001.pdf&leg=XVII#pagemode=none (12.01.18)

²⁷ Francesca Delvecchio, La nuova fisionomia della vittima del reato dopo l'adeguamento dell'Italia alla Direttiva 2012/29/UE, 11 aprile 2016 in *Diritto Penale contemporaneo* - <https://www.penalecontemporaneo.it/d/4628-la-nuova-fisionomia-della-vittima-del-reato-dopo-l-adequamento-dell-italia-alla-direttiva-201229ue> (12.01.18)



interests and needs of the victim, repairing harm to the victim and avoiding further harm. Participation of the victim should be voluntary²⁸.

In the Italian juvenile justice system, we usually talk about “criminal mediation” and “probation” (two different forms of restorative justice) with regard to the juvenile criminal proceeding in front of the Juvenile Court, and therefore when the offender (and not necessarily the victim) is a child. The mediation, in line with the principles underlying the juvenile criminal law, favours the empowerment of the child and allows him/her to gain greater awareness of the damage caused by the crime, reflecting on the reasons for his/her behaviour. It opens up a dialogue between the offender and the victim with the help of a third party with the aim to restore the harm caused by the minor.

On the other hand, the probation²⁹ provides for the suspension of the proceeding. At the end of this period during which the child has to repair the damage and follow a rehabilitation process, the Judge, if considers that probation has been successful, must declare by judgment the extinction of the offence.

More recently, in 2014, the Italian legislator has extended the probation institute, with law 28.04.2014 n. 67, to the adult criminal proceedings. While this institute will not be fully assessed within this report due to its complexity, it is important to highlight the importance recognized to these “new” forms of justice where the role played by the offender and the victim is deeply taken into account. Moreover, the use of restorative justice services has an important link to offender compensation to the victim (as an alternative or complement to financial compensation)³⁰.

With regard to the **training of practitioners**, in compliance with art. 25 of the Directive 2012/29/EU, this role is in the Italian legal system delegated to the Judiciary High School with regard to the training of judges. Training courses are also foreseen for lawyers and public forces but as it can be seen in Country report the individual assessment methodologies of child victims of crime in Italy, this aspect is one of those that still needs to be improved. As suggested by all the professionals interviewed, more cooperation among the actors involved is fundamental to ensure specialized training in the field of child rights and protection, also from a prevention point of view.

²⁸ DG Justice Guidance Document in <http://www.legal-tools.org/doc/daaee5/pdf/> (13.01.18)

²⁹ Art. 28 DPR 448/88

³⁰ DG Justice Guidance Document in <http://www.legal-tools.org/doc/daaee5/pdf/> (13.01.18)



5. Conclusion

The Victims' Directive has been fully implemented into the Italian legal system. Now, all victims - and not only victims of particular crimes - are equally protected, even if specific protective measures apply to those more vulnerable and in particular children. The major criticism is, however, the lack of harmonized procedures and practices at national level.

We have already mentioned that in Italy, there is no structured state system for supporting victims of crime, apart from associations, helping persons in specific situations³¹. In other words, no generic victim support services are available in Italy³² but a range of public and private actors that share the mandate of protecting and supporting child victims of crime at different latitudes. As a consequence, the support of child victims is left to the private sector and to the local actors involved in child protection.

A major uniformity is what all the Italian stakeholders mostly require in order to effectively protect the victims and child victims in particular.

Although the transposition measures constitute a big step towards the identification of the victims' needs, the Italian legislative Decree has missed the occasion to completely reform the Italian criminal system that is still aimed at establishing the facts and to "punish" the offender more than looking after the victim. Perhaps only putting the victim at the centre of the proceeding itself might help to put into practice all the provisions already existing that are, however, often differently applied in distinct contexts.

Another major critique comes from a research conducted by CISMAI – Italian coordination service against mistreatment and child abuse - according to which although Italy is in compliance with most of the international standards protecting child victims, we still face too many situations of "institutional abuse" in schools, social services and Courts. This means that the monitoring level on the children rights has been lowered³³, probably also due to the drastic reduction³³ of funds for social policies.

Prevention strategies and programmes against child maltreatment and abuse need also to be strengthened and consolidated. A prevention approach must constitute a cross-cutting aspect of all the policies in this

³¹ Paweł Wiliński, Piotr Karlik (eds.), *Improving protection of victims' rights: access to legal aid*, in www.csd.bg/fileSrc.php?id=22138 (15.01.18).

³² <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/models> (15.01.18).

³³ <http://cismai.it/coltivare-e-promuovere-contesti-sicuri-per-bambini-e-ragazzi/> (15.01.18).





field, from the social to the medical, from the educational to the judicial one.³⁴ Improved coordination mechanisms and common multidisciplinary guidelines among the different actors working in these disciplines are needed to ensure efficient models of intervention able to put the victim and his or her rights at the centre.

Lastly, violence against children is, above all, a cultural problem. There is the urgent need to raise the awareness of institutions and citizens on this matter and promote a rights-based culture towards childhood and adolescence.

³⁴ http://cismai.it/wp-content/uploads/2015/02/CISMAI_LetteraApertaAlGoverno9b3e.pdf (15.01.18).



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Glossary

List of specific terminology used in national jurisdiction relevant to the paper (if applicable).

Incidente probatorio	Hearing of the victim that allows the early taking of evidence, prior to the debate phase
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