



Study on the individual assessment
methodologies of child victims of crime

Italian Report

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1. Introduction

The purpose of Directive 2012/29/EU is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings (art. 1).

Its principles and provisions aim at protecting the victims from any form of secondary and repeat victimization, intimidation and retaliation and more generally, at granting them an impartial, respectful and professional treatment (art. 25).

The Directive focuses on the following important aspects, all of which aim to strengthen the child rights: **Information and support** (articles 3-9), **Participation in criminal proceedings** (articles 10- 17), **Protection and recognition of victims with specific protection needs** (articles 18-24), **Training of practitioners and cooperation of services** (articles 25-27).

The core objective of the Victims' Directive, as declared in the DG Justice Guidance Document¹, is to deal with the individual victims' needs, based on an individual assessment and a targeted and participatory approach towards all the provisions.

This report, in particular, will focus on the individual assessment methodology in Italy, and on the identification of specific protection needs and measures accordingly. Victims of crime might, in fact, be particularly vulnerable to secondary or repeat victimization, to intimidation and to retaliation during criminal proceedings. Moreover, as this vulnerability affects in particular children, our analysis will focus on them and their special protection needs, according to the child-sensitive approach pursued by the Victims' Directive itself, wherein the best interest of the child victim must always be the primary consideration throughout their involvement in criminal proceedings.

The report has been drafted following the methodological indications of the leading partner, contained in a methodological protocol specifically elaborated for this research.

The research included a desk review as well as semi-structured interviews with the following key actors: a responsible of a private victim's support service, a youth lawyer and a responsible

¹ <http://www.legal-tools.org/doc/daaee5/pdf/> (accessed on 17.01.18).



of the medical emergencies department of a paediatric hospital. Interviews were aimed at assessing the extent to which the provisions foreseen in the Victims' Directive, in particular article 22, are applied in practice and how in Italy. To this end, they were structured around four main topics:

- a) General situation regarding the rights of child victims in Italy in the context of criminal proceedings;
- b) Transposition and implementation of the Victims' Directive;
- c) Individual needs assessment procedure;
- d) Needs and proposals for improvement.

2. Quantitative Overview on child victims of crime in Italy

Crime reports arriving daily in the offices of the police and involving child victims relate, primarily to crimes of domestic violence - first of all abuse in the family, sexual violence offences and sexual exploitation -, and to crimes against property and bullying.²

Indeed, statistical studies and research carried out in recent years have shown that, although some violent acts occur unpredictably and occasional, most of the abuse suffered by children is committed by people in whom young victims should be able to put their trust: parents, teachers, classmates and peers. Additionally, violence is not necessarily related to "disadvantaged" contexts. On the contrary, the offenders and victims can belong to any socio-economic status, or age group. The phenomenon appears therefore particularly complex and difficult to bring to the surface³.

Moreover, ***“the data collection is very difficult and fragmented. First Aid stations have a paper archive plus an institutional system elaborated by the Higher Institute of Health, but the latter***

² *Garantire i diritti dei minorenni, Vademecum per le forze di polizia*, Autorità Garante per l'Infanzia e l'Adolescenza in http://www.interno.gov.it/sites/default/files/vademecum_insieme_per_la_tutela_dei_minori.pdf (accessed on 17.01.18).

³ *Garantire i diritti dei minorenni, Vademecum per le forze di polizia*, Autorità Garante per l'Infanzia e l'Adolescenza in http://www.interno.gov.it/sites/default/files/vademecum_insieme_per_la_tutela_dei_minori.pdf (accessed on 17.01.18).



*is very difficult to use. Moreover, this data collection system is more related to women rather than children. Only some hospitals are then involved in collecting data, therefore the archive is not complete. Also Judicial Authorities and social services collect data, but there is not a uniform database into which all the different data collected might flow”.*⁴

2.1 Numbers of child victims of crime in Italy

According to a study carried out by Terre des Hommes⁵, embracing the time span of five years (2011-2015) and analysing changes in the various types of crime in Italy, we came to the conclusion that we are dealing with an increasing phenomenon. In 2011, child victims were 4,946 (61% girls), while in 2015 the number slightly increased up to 5,080 (60% girls), with an increase of 3%. Certainly, the most worrying data is represented by the exponential growth (+ 543%) of sexual exploitation of children in pronography, where the victim number has increased from 23 in 2011, to 148 in 2015. 81% of them were girls. This is definitely one of the areas of exploitation of children that requires more efforts to be defeated. A meaningful growth (+ 148%) has also been recorded with regard to sexual acts with minors under 14 years, or less than 16 years in the case of close relatives or foster carers: the victims were 411 in 2015, thereof 78% have been female victims.

Sexual violence and worse forms, instead, mark a decline in the last 5 years, -26% and -31% respectively. However, in absolute terms: 908 minors in 2015, involving more than 82% females, the above mentioned crimes are the types with the highest number of victims after family abuse (1,442, +24% in 5 years) and the breach of the family assistance obligations (961, +9% on 2011), where the percentage of females is quite aligned with the opposite sex.

⁴ From the interview with the Responsible of a First Aid station.

⁵ https://terredeshommes.it/indifesa/dossier/InDifesaDossier_2016.pdf (accessed on 17.01.18).



A chart, realized within this study, might be useful to better summarises the key findings in this respect:

Table 1: Child Victims of crime⁶

	2011	2015	Δ
	victims < 18		Δ %
Intentional murder	17	13	- 24%
Breach of family care obligations	882	961	+ 9%
Means of correction abuse	182	266	+ 46%
Maltreatment in family	1.164	1.442	+ 24%
Unable (to understand and take action) subjects abduction	220	252	+ 15%
Children or unable subjects abandon	429	408	- 5%
Child prostitution	104	90	- 13%
Possession of pornography material	74	66	- 11%
Child pornography	23	148	+ 543%
Sexual exploitation	822	607	- 26%
Sexual acts with minors	166	411	+ 148%
Minor's corruption	446	115	- 74%
Aggravated sexual exploitation	434	301	- 31%
Total amount	4.946	5.080	+ 3%

Source: Terre des Hommes and Cismai, 2016

⁶ Data collected with regard to the minors taken in charge by the social services, according to a survey conducted by Terre des Hommes and Cismai in more than 230 Italian Municipalities for the Ombudsman for Childhood and Adolescence



2.2 Authorities working with child victims of crime in Italy

In Italy, there is no structured state system for supporting victims of crime, apart from associations, helping persons in specific situations⁷. In other words, there are no generic victim support services available in Italy⁸, however, there is a range of public and private actors that share the mandate of protecting and supporting child victims of crime at different levels. In fact, these centres are not directly established by the State but rather by a tremendous number of private institutions, which are present all around the Country.

We will analyse hereafter in paragraph 4 how the Italian system works. Here we give an overview on child protection centres in general.

One of the most important associations, dealing with victims and child victims in particular, is certainly CISMAI – Italian coordination service against maltreatment and child abuse. It is a quite unique association in the country characterised by its multidisciplinary and theoretical considerations, all carried out by professionals effectively working in this field. In recent years their activities have strongly contributed to strengthen the awareness of the most severe and harmful forms of violence, such as sexual violence, chronic negligence and witnessing violence that had been denied for too many years.

Also, police forces, judicial authorities (Prosecutors, Ordinary and Juvenile Court), healthcare and educational institutions and social services play an important role to prevent, but also to recognise all the different forms of violence against children. Unfortunately, there are no national guidelines in place, but in some municipalities protocols have been drafted in order to plan a strategy to give child victims the necessary support in terms of medical, legal and psychological assistance.

In this context we can refer to a protocol signed by the Public Prosecutor of the Ordinary Court in Milan, the Municipality of Milan and the Prefecture⁹. This Protocol is quite recent, it

⁷ Improving protection of victims' rights: access to legal aid, Paweł Wiliński, Piotr Karlik (eds.),

www.csd.bg/fileSrc.php?id=22138 (accessed on 17.01.18).

⁸ <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/models> (accessed on 17.01.18).

⁹ <http://www.procura.milano.giustizia.it/files/protocollo-intesa-vittime-vulnerabili.pdf> (accessed on 17.01.18).



was signed on the 29th of March 2017, so it is still quite early to estimate its impact. However, it is important to take it into consideration as it is finalised to offer crime victims help desks in all the fields mentioned above and to promote initiatives to strengthen the cooperation between all the actors involved as well as adequate training.

Similarly, different Emergency Paediatric Hospitals have drafted guidelines to support medical forces in the proceeding of recognizing a child abuse or maltreatment and reporting it to the Police Forces or Judicial Authorities. In Genoa municipality, an important project called AMALTEA has been implemented since 2011¹⁰. One of the tasks of the project is to establish a sustainable prevention of "institutional abuse" also known as "secondary victimization". This phenomenon can be avoided through a periodic debate and exchange of experiences among subjects and authorities that deal with violence, to offer to the victim coordinated intervention of protection, support and care.

Support groups, counselling, training for professionals and a closer collaboration between the institutions should be further encouraged and developed to protect and provide better, tailored care for the victim. Recognizing promptly the signs of abuse is fundamental to prevent the maltreatment of children. Moreover, it helps to avoid the vulnerable situation when child victims come into contact with the health and justice system and face the institutional disorganization. The institutional abuse, also called "secondary victimization", can in fact be represented by the mere delay of "taking in charge" (the minor)¹¹.

¹⁰ There are several actors involved: Local Health Authority, Giannina Gaslini Hospital, Galliera Hospital, S. Martino Hospital, Public Prosecutor in the Ordinary and Juvenile Court of Genoa, Juvenile Court of Genoa, Police Forces of Genoa, The Ombudsman for Childhood and Adolescence of Region Liguria, UNICEF Committee of Genoa, Medical Association of Surgeons and Dentists, Italian Federation of Pediatricians - Section of Genoa, Genoa Local Bar Association, Genoa Psychoanalytic Center.

¹¹ <http://www.comune.genova.it/content/rete-amaltea-prevenire-e-contrastare-la-violenza-sui-minori-e-di-genere> (accessed on 18.01.18).



3. Organisational transposition of the individual assessment methodologies and special measures for child victims of crime in Italy

As already mentioned in the current country report, the legal acts providing for in victim support services are very fragmented in Italy. In fact, victim support services are not coordinated by a central authority at national level. There are services or support centres for victims, all entrusted to specific initiatives in health care facilities, municipalities and regions. These structures work with the police and the justice system, as well as with social services and voluntary associations in the respective area.

Victims of crime turn to the various regional Police Forces (State Police, *Carabinieri* and *Guardia di Finanza*), where there are always personnel equipped to provide practical advice directly or through contacting institutions, organisations, associations, offices and entities giving assistance to victims of specific offences (usury, fraud, racketeering, sexual exploitation) or for cases of vulnerable individuals (children, women, elderly). These victim support services might carry out the individual assessment, but their intervention must be required by the proceeding Judicial Authority. The first assessment is therefore carried out by the judicial authority who might take advantage of all the above mentioned actors. We will see hereafter how their intervention is ruled. The national law does not give any indications about the professional in charge to carry out the individual assessment, therefore, in most of the cases, according to one of the interviewed professionals working in a support centre for children, ***this is usually carried out by the social services***¹².

¹² From the interview with the Responsible of a victim support service association.



3.1 Description of authorities and institutions

In this context CNOAS – Social Assistance Order – plays certainly an important role as it carries out coordination activities, giving its members guidelines to follow and being their main referent in all the different situations they are required to take action. Anyway, regarding child victims there are no national protocols or guidelines in place. Nevertheless, there are some local ones agreed with the schools, with the Judicial Authorities or the medical staff. Social workers might also cooperate with other institutions whose role is to assist the child victim and support him/her also during the criminal proceeding.

As mentioned above, one of the main institution commissioned with the individual assessment procedure, even if with the already mentioned limits¹³, is:

- CISMAI – Italian coordination service against maltreatment and child abuse. It should be noted that this organisation is primarily occupied with the provision of social services to child victims rather than being in charge of carrying out the individual assessment. Most of its members are non-profit organizations supporting child victims at every stage, that is also from the moment they know about the abuse.

“It is important to video-record the violence disclosure so that it can have more value in the proceeding. We, as association, deal with child victims that have already entered the criminal circuit. We help them and their families (we refer to care giver adults) in elaborating the trauma through a psycho-therapeutic support. Our professionals are all trained in this particular kind of trauma. We can be considered as those victim support services outlined by articles 8 and 9 of the Victims’ Directive, but there is still a lot to do. In recent years more and more specialised associations have arisen but the procedures and praxis are not uniform and Guidelines are left to the discretion of individual associations, Judicial Authorities or police forces”.¹⁴

¹³ All the organizations, associations are private as in Italy there is no structured state system for supporting victims.

¹⁴ From the interview with the Responsible of a victim support service association.



Among the other relevant institutions which were deemed as suitable to be examined under the framework of the current study are:

- TIAMA - Center for trauma of childhood and adolescence, maltreatment and abuse. The Center provides a specialist service of diagnosis and treatment of post-traumatic disorder as a result of the experiences of victimisation, with a plurality of interventions. The staff of the Center consists of psychologists, juvenile neuropsychiatrists, social workers, legal advisers and experts in the field of child abuse and maltreatment.

- CBM – Center for the abused child. CMB is a non-profit organization with a mission to provide care to both child victims of traumatic events and of their families. This organisation is, in fact, deeply convinced that it is not enough to separate the child from those who injure him/her, but that the care of adults and violent contexts is fundamental as well in terms of efficient prevention.

Next to these organizations we have to mention also those developing raising-awareness activities among all practitioners and professionals in contact with victims, such as:

- AIMMF – the Italian Juvenile and Family Judges Association.

AIMMF's objectives are:

- Protecting and promoting juvenile and family rights;
- Raising awareness on current issues sharing experiences and developments in this field;
- Organising and promoting specialised training for juvenile and family judges;
- Studying and proposing law changes and social projects concerning juveniles and families;
- Promoting meeting between family and juvenile judges and between them and social sciences specialists and social workers.

- YOUTH CHAMBERS NATIONAL UNION (UNCM) – is a law association (non-profit organization) representing over 34 Juvenile Chambers located throughout the country and in nearly all regions. UNCM's main purpose is the study and dissemination of juvenile and family law, through research and training activities, with the awareness that specialization is an



undeniable necessity, more than in other fields of law. It promotes the dialogue among all the spectrum of professionals dealing with minors, on the assumption that the multidisciplinary approach and recognition of the different roles can lead to an increase in the quality of defence in favour of minors.

4. Report on the individual assessment procedure and special measures for child victims of crime in Italy

4.1 Institutional preconditions

One of the most important achievement of the Directive is encompassed in art. 22 outlining the nature of the individual assessment of victims with the aim to identify specific protection needs, according to which “*Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation*”.

In Italy the Victims’ Directive has been transposed by Legislative Decree 15th December 2015, n. 212 (entered into force on the 20th January 2015, that is one month later compared to the deadline given by the Directive itself). Although most of the principles contained in the Directive were already present in the Italian legal system it is important to underline that the Italian system of criminal procedure¹⁵ does not provide for a specific legal status of a victim of crime. What is present in Italian Criminal Procedure Code (hereinafter, CPC) is the figure of a *persona offesa dal reato* (person who suffers the effects of a crime) - the passive subject of a crime, which

¹⁵ The Italian criminal trial system is divided into investigation and trial. The system is based on the adversarial principle, i.e. evidence of the crime is verified in the discussion phase before the courts. The investigation ends with the decision whether to prosecute or not the person under investigation (preliminary hearing), whilst the term trial refers to the stage of the procedure in which evidence is provided.



means the person affected by the act or omission, constituting the crime. In procedural terms, this is the victim, if he/she does not have a specific procedural status. The Code also delineates the person of the *danneggiato dal reato* (the offended person/civil party/plaintiff) - the person seeking compensation within the framework of criminal proceedings for the damage incurred. In this capacity, the victim is entitled to assume a more active role in the criminal procedure.

The distinction between a civil party and the victim is important, since it is assumed that the victim is directly interested in the prosecution and punishment of the offender, while the damaged person seeks to obtain financial compensation for the damages he/she has suffered. When the victim of a crime dies as a direct consequence of an offence, his/her rights may be exercised by his/her 'close relatives', defined as the parents, children, siblings, uncles, aunts and nephews of the direct victim (Art. 307 *Criminal Code*), as well as foster parents and children and co-resident partners¹⁶.

Moreover, although the Victims' Directive invited the national legislators to adopt a general protection of the victim, whose vulnerability has to be evaluated on a case-by-case basis, considering the personal characteristics of the individual, the type, nature and the circumstances of the crime (art. 22, par.2), the Italian legislator has adopted in its art 90-quarer c.p.p. specific criteria (age, infirmity, psychological inferiority, type of crime) indicating the status of vulnerability and only in a second step the parliament has considered the nature and the circumstances of the crime to assess the vulnerability of the victim. According to the pertinent national law the vulnerability is therefore deducted if the abovementioned conditions occur, while the European Directive makes clear the need of a case-by-case approach towards victims. Only child victims, according to art. 22, par. 4 are presumed to be particularly vulnerable and therefore need to benefit from special measures as stipulated by articles 23 and 24 of the Directive. Anyway, in order to establish to what extent those measures should be granted to minors, they are subject to a procedure of individual assessment. The assessment for children therefore consists of

¹⁶ Improving protection of victims' rights: access to legal aid, Paweł Wiliński, Piotr Karlik (eds.), www.csd.bg/fileSrc.php?id=22138 (18.01.18).



determining which of the protection measures listed in articles 23 and 24 of the Directive should apply.

Also, according to the Italian law, children are presumed to be particularly vulnerable and therefore different measures must be applied. The Italian criminal code states that in the case of certain offences (all those against the “person”, such as abuse, maltreatment, slavery, exploitation in prostitution and pornography, sexual violence or human trafficking) committed against minors or by one of the parents against the other (in the case of the so called “witnessing violence”), the Prosecutor has the obligation to inform the Juvenile Court. However, only in the case of particular circumstances – if the offender is one of the parents or there is a suspect, and they are not able to look after their child¹⁷ - a civil proceedings case is initiated before the Juvenile Court.

In an event of occurrence of any of the abovementioned “personal offences”, affective and psychological support to child victims is assured at every stage of the proceedings, by the parents or other suitable persons chosen by the child, as well as by groups, foundations, associations or non-governmental organisations with proven experience in the field of assistance and support to victims. These persons need to be in the list of persons entitled to do so, with the consent of the minor, and allowed by the competent 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 authorities¹⁸.

To summarise, the Italian legislation does not explicitly foresee particular provisions and rules for the individual assessment procedure. However, as we will see in the following paragraph, any official or professional working in child protection who enters into contact with the child victim, as soon as he or she becomes aware of the nature of the offence, has the duty to carry out an individual assessment procedure in order to support the child and satisfy his/ her protection needs. The individual assessment happens therefore at both stages: at the beginning of the proceedings - in the pre-trial phase, as we have seen above, as well as during the proceedings, whenever the Judicial Authority requires to do so.

¹⁷ This happens when the parents are not able to exercise, fully or partially their parental responsibility.

¹⁸ Art. 609-decies c.p.



As the following statement made by a responsible for a pediatric first aid station shows:

“We, as hospital, are consulted by the Court to carry out the assessment whenever the Court is the first one to know about the offence. An in-depth analysis might also be asked later on during the proceeding. Moreover, it happens that child hearings take place in the hospital”.¹⁹

For the sake of clarity an important distinction in Italian legislation between the case of violence within the family (the so called *reato endofamiliare*) and the case of a harm suffered from a third party (in both cases assuming that the offender is an adult²⁰) has to be made. In the first case, as briefly mentioned earlier, according to the Italian law, two different types of proceedings are opened against the offender: one in front of the Criminal Ordinary Court and the other in front of the Juvenile Court. The criminal proceeding aims to establish the relevant facts and “punish” the offender. In such cases the victim is not considered as a subject in need of protection and therefore she or he is left behind the attention of the authorities. ***“All the assessments and judicial activities are focused on ascertaining the truth, on the crime itself. The victim disappears”.***²¹

At the same time, the proceeding before the Juvenile Court are civil proceedings by nature, and aimed at ensuring the parental responsibility of the child victim either by his/ her parents or other relatives in charge to look after and care for the minor. In this case the attention is focused on the minor whose consideration becomes a priority. ***“[the proceedings] In front of the Juvenile Court things are completely different. A great attention is paid to the victim. In this context the proceeding itself demands to the social services or other associations specialized in trauma to support the child. The assessment, as required by art. 22 of the Victim Directive, takes effectively place in this context”.***²²

¹⁹ From the interview with the Responsible of a First Aid station.

²⁰ If the offender is a child the proceeding will be entirely held in front of the Juvenile Court with a particular kind of proceeding especially designed for minors.

²¹ From the interview with a lawyer specialized in juvenile criminal law.

²² From the interview with a lawyer specialized in juvenile criminal law.



In the second scenario outlined above, when the offender is a third party - outside of the family, only the criminal proceeding takes place in front of the Ordinary Court. Therefore, the same considerations as described above (the proceeding is more focused on establishing the facts and “punish” the offender rather than on the victim itself) apply. ***“The victim is in some cases lonely. Apart from procedural safeguards that are in any case granted for child victims, the support foreseen by our legislator is not always granted”.***²³

4.2 Operational aspects

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 who should be the professional in charge to carry out the individual assessment and how. The Directive establishes that the assessment should be carried out at the earliest opportunity for all victims (recital 55), while the extent of it may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victims (art. 22 paragraph 5). As no specifications are given under the Italian legislation, the assessment falls, potentially, on a wide range of stakeholders.

As referred by a criminal lawyer who was interviewed under the scope of the current report ***“In practice, as soon as we have news of a crime, the Prosecutor decides immediately which protective measure to adopt, as for example to remove the child from his/her home and collocate him/her in a safe context or not.”*** Already at this stage an assessment is carried out to evaluate the specific protection needs of that child.

The same situation occurs, when social services or first aid station become aware of an offence against a child. In this case, those organisations are in charge to carry out the individual assessment. ***“We, as first aid station, immediately activate the network: we report the case to the Ordinary and Juvenile Prosecutor or to the Police Forces, then alert the Healthcare Management and the social services. As hospital we evaluate the healthcare process of the child deciding if he/she needs to be admitted to hospital or not. If dismissed, the child is***

²³ From the interview with a lawyer specialized in juvenile criminal law.



*promptly taken in charge by the psychologists to start the therapy. The assessment is carried out by a multidisciplinary team formed by a doctor, a gynaecologist, a psychologist, a social worker, and a neuropsychiatric”.*²⁴

According to the responsible expert of the victim support service we interviewed *“in practice the assessment is usually carried out by social services where there are integrated equips (psychologists and social workers)”*.

One important aspect that has been highlighted, is the importance of having properly trained professionals dealing with child victims of crime - *“If we think that the medicine university course has no exams in this matter of child abuse and even specialised courses do not exist, it is a big problem when you start working and have to deal with these situations”*.²⁵ The same problem is encountered in the law faculties all over Italy. Training is therefore fundamental but often left to the individuals’ own responsibility.

It might be useful at this point, to recall the main recommendations that the Directive addresses to all those individuals who, for professional reasons, might enter into contact with the victims: It is important that they *“should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner”* (recital 61). Despite this, as one of the interviewees specifies - the teams that usually carry out the assessment *“are not always specialized in injury/trauma. In the most important cases, however, specialised associations are usually consulted. The assessment is usually carried out after the condemnation, in occasion of the “incidente probatorio”*²⁶ *where the Judge wants to see and speak with the child victim. This occurs through a professional person, if possible already known to the child, and in the same context also the individual assessment is required. No uniform methodology at national level exists. The*

²⁴ From the interview with the Responsible of a children first aid station.

²⁵ From the interview with the Responsible of a children first aid station.

²⁶ It is a phase of the Italian criminal proceeding that allows the early taking of evidence, prior to the debate phase. The proof is therefore formed during the investigations.



assessment is not always periodically revised, it depends on the proceeding's length. If the same case is also brought to the attention of the Juvenile Court ²⁷, the child is constantly under observation and monitoring"²⁸.

Therefore, one might come to the conclusion that there is a real necessity to effectively train the operators involved, as required by art. 25 of the Directive as well as by the Italian legislation that foresees specific training courses for judges, lawyers, police officers and social services.

4.3 Results

As a result of the transposition process of Article 23 and 24 of the Directive, some articles of the Italian criminal procedure code were amended. The main challenge is however, as usual, the effective implementation in practice. Considering the measures listed in article 23 and 24, the next section will analyse if the same provisions find place and how in our internal law.

During the stage of criminal investigations, the police authorities that are in charge of assuming summary information should – in cases the victim is a child, but also a vulnerable person in general - include an expert in psychology or in child psychiatry in the planned procedures. Moreover, it is foreseen that the contact between vulnerable victims (in general and not only if they are minors or not) and the offender should be prevented, and that the victim should only have to testify once. The same provisions apply if the investigations are carried out by the prosecutor²⁹. ***“However, in practice 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)”³⁰. “It is true that the hearing is led by a psychologist and a lot of caution is paid towards the child”³¹.***

²⁷ This might happen when the child has been harmed by one of the parents. In this case a corresponding civil proceeding is initiated to evaluate the parental responsibility.

²⁸ From the interview with the Responsible of a victim support service association.

²⁹ Art. 351, 362 c.p.p.

³⁰ From the interview with the Responsible of a victim support service association.

³¹ From the interview with a lawyer specialized in juvenile criminal law.



With regard to the next phase of the Italian criminal proceeding, called “incidente probatorio”³², it is because of the Directive that the options to provide the incidente probatorio itself have been increased. As a result of the transposition, the provision now also applies for minors and vulnerable persons in general, without taking into consideration the age or the nature crimes involved. In these cases, particular protection measures shall apply³³.

These particular protection measures consist in:

- Adopting a mirror glass;
- Conducting the hearing in a place different from the court, such as specialised assistance centres or even at the victim’s residence;
- Declarations must be documented by phonographic or audio-visual instruments.

In fact, all these provisions do apply in practice, as lawyers have confirmed. *“The incidente probatorio is led by the Judge in a dedicated room with video-cameras and all the persons involved do everything to avoid the child meeting the offender”*³⁴. Nevertheless, a critique has been raised by the Responsible of a victim support service who we interviewed: *“according to the Judge, before the incidente probatorio, nobody can talk to the victim (also if it is a child) in order to avoid any form of brainwashing. This is absurd, as if you do not take action promptly the damages might be huge. This is even more important with child victims who more than others need immediate protection and support”*. This statement means that according to the judge’s interpretation, the child victim must not initiate the therapy before the he or she has been assessed and heard within the criminal proceeding.

The same aspect has been considered in a different way from a legal point of view, *“as talking” with the child, outside the proceeding, might affect his/her memory, thoughts and ideas and therefore affect the proceeding itself. The child might, in fact, recall something different from the reality. Therefore, the choice not to have contacts with the child before the*

³² See previous footnote 26.

³³ Art. 392, comma 1-bis and art. 398, comma 5-quater c.p.p.

³⁴ From the interview with a lawyer specialized in juvenile criminal law.



proceeding is taken in his/her own interest in order to have a trial able to effectively discover the truth and protect the child victim”³⁵.

To solve this problem and to prevent the phenomenon of “institutional abuse”, it is recommended to reduce the length of the proceeding and schedule the hearing of the child as soon as possible.

Finally, during the stage of “dibattimento” the hearing is possible only if related to facts and circumstances that differ from those declared in the previous phases of the proceeding. This limit, before the implementation of the Victims’ Directive, was foreseen only for children under the age of sixteen and related to some sexual crimes. Recently it has been extended to all the vulnerable victims in general³⁶. In any case, in order to protect the child and safeguard his/her needs, *“it is rare that the Judge hears the child also in this procedure phase”³⁷.*

In addition, with particular regard to the measures specifically provided for minors and taking into account the stipulations of art. 24 of the Victims’ Directive, the audio-visual record of a child victims’ interview (and of other vulnerable victims) is, according to Italian law, always possible and the Judge is in charge to evaluate its necessity on a case-by-case basis.

Also, a dedicated representative for the child victim is appointed if the holders of parental responsibility do not exist, are precluded from representing the child or are in conflict of interest with him/her³⁸. Children under the age of fourteen are represented by their parents or guardians. Children aged over 14 can take action on their own³⁹. If the child victim is under the age of fourteen and the holders of parental responsibility do not exist or are in conflict of interests with him/her, the action can be taken by a special representative called “curatore speciale”⁴⁰.

³⁵ From the interview with a lawyer specialized in juvenile criminal law.

³⁶ Art. 190-bis, comma 1-bis c.p.p.

³⁷ From the interview with a lawyer specialized in juvenile criminal law.

³⁸ Art. 90 c.p.p.

³⁹ Art. 120 c.p. The “curatore speciale” might be himself/herself a lawyer or can appoint a lawyer to represent the child.

⁴⁰ Art.121 c.p.



The *ratio* of all the above-mentioned measures is therefore to protect vulnerable victims and reduce the risk of submitting them to useless emotional and psychological pain as a consequence of repeated interviews and hearings without an effective investigation need.

Thus, 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 the Italian national legislator⁴¹, even if important divergences have been outlined.

First of all, in the Italian criminal justice system the victim of crime is referred to as "*person who suffers the effects of a crime.*" Moreover, the aim of the ordinary criminal proceeding is to establish the relevant facts and punish the offender. In addition, there is a persistent lack of a state system of victims' support services. Likewise, the growth of different organisations/associations offering support to the victims is facing many difficulties due to the lack of recommendations at national level. Guidelines and protocols are therefore drafted only internally and at local level at maximum. The Italian legislator could have also given more indications in terms of the subjects' responsible to carry out the assessment and the procedure to should be followed.

5. Conclusion

The Italian system suffers a cultural gap in view with the importance of the victims' status. The Italian criminal system is in fact aimed at establishing the facts and "punish" the offender more than looking after the victim. A general lack of structural attention and awareness on victims' exigencies of receiving specific and qualified support, in particular for children, has been outlined. As a consequence, the support of child victims is left to the private sector and to the local actors involved in child protection.

⁴¹ With some exception related to the training of practitioners and restorative justice that will be better analyzed in the Italian country report on the legal implementation of the Victims' Directive.



Already in 2001 - many years before the Victim Directive - the Minister of Justice set up an “Observatory on problems and support of the victims of crimes”⁴² with the main task to raise public awareness on the rights and needs of victims. However, in 2003 the Observatory was closed. Re-establishing such an important institution, in particular after the transposition of the Directive and in order to grant its implementation, would be very useful for the initiation of a fruitful debate on victims’ status and their rights which remain rather weak in the Italian society.

Other aspects that must be taken in great consideration and that still need to be improved are related to awareness-raising activities and specialized training. In this context, as also suggested by all the professionals interviewed, more cooperation among the Educational Institutions and Universities is fundamental to ensure specialised training in the field of child rights and protection, also from a prevention point of view.

Another need for improvement concerns the availability of financial resources. National authorities should dedicate more resources and funds to prevent child abuse or maltreatment, in practice, this means to save resources and invest them to effectively protect children.⁴³

Finally, guidelines at national level are essential to reduce the fragmentation and discretion and promote the harmonization of procedures, methodologies and practices in order to grant all child victims an equal treatment based on their individual needs and entitled rights. Only in this way, also the so called “institutional abuse” might be defeated and child victims, wherever they live in the country, would have the same possibilities to benefit from their right to access support services, with equivalent levels of expertise, and would benefit from the same guarantees in the criminal proceeding.

⁴² Osservatorio sui problemi e sul sostegno delle vittime dei reati.

⁴³ <https://www.minori.it/en/node/4635> (18.01.18).





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Web Resources

<http://www.legal-tools.org/doc/daaee5/pdf/>

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

<http://www.procura.milano.giustizia.it/files/protocollo-intesa-vittime-vulnerabili.pdf>

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