



Reshaping treatment approaches towards victims of sexual violence within criminal proceedings.

MAIN CONCLUSIONS

- *The Italian legal system has **several tools** that allow the victim to be informed about her rights in case of sexual crimes: all professionals involved are concerned with informing the victim about her rights.*
- *There are some interesting **protocols** that allow the victim to have an appropriate treatment especially in the first phase of hearing and preliminary investigation.*
- *Concerning to the treatment received by victims **differences due to geographical location** still exist: protocols do not seem to be applied uniformly across the territory.*
- *During the criminal trial, there is a focus on the victim who has to testify. In some courts, **protected rooms** have been provided for the hearing of vulnerable victims.*
- *Specialist training provides an opportunity to ensure that individual and stereotyped beliefs are no longer part of the sentence motivation, neither in the formulation of questions by lawyers during the hearing.*

SEXUAL VIOLENCE

Sexual violence is a worldwide phenomenon and the European Community has chosen to contrast it in the 21st century by making it a priority to ensure adequate protection for all victims. In addition, the United Nations, the European Union and the Council of Europe are committed to identifying new strategies that enable a gender perspective to be adopted.

National Italian Report

EXECUTIVE REPORT

CRIMINAL JUSTICE IN SEXUAL OFFENCES IN ITALY

Directive 2012/29/EU refers to the rights, needs and interests of victims of sexual violence. In line with these specific interests (Art. 22), the RETREAT project aims to promote fair and appropriate treatment of victims of sexual crimes within the legal systems of three Mediterranean countries: Spain, Greece and Italy.

The analysis of Italian legal system regarding the situation of victims of sexual violence focused on the treatment these women receive. The objective of the work was to explore the experience that a victim of violence may have once she has reported a crime and entered the Justice System.



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Financed by
The European Union
Justice Program (2014-2020)

INTERESTS OF VICTIMS OF SEXUAL CRIME AND THE JUSTICE SYSTEM	
1. Privacy (art. 21)	a. <i>Shame and informative self-determination</i> b. <i>Anonymity</i> (art. 23)
2. Information (art. 6, art. 7)	
3. Participation	a. <i>To be heard</i> (art. 10- Voice in Daly model) b. <i>To ask, to demand, to agree, to get answers</i> (art. 11, when no prosecution, art. 12 restorative justice, art. 13 legal aid-Participation in Daly model)
4. Compensation (art. 14, reimbursement of expenses, art. 16, compensation from the offender)	
5. Security (art. 18 protection)	
6. Dignity (art. 18 explicitly; in abstract: art. 23.2.a, interviews in special premises, art. 23.2.b. carried by through professionals trained for that purpose, art. 23.2.c, by the same person, 23.2.d, of the same sex, art. 23.3.c, avoid unnecessary questioning concerning the victim's private life not related to the criminal offence)	
7. Support (art. 8, victim support services, 24.1.b, special representative for the child victim in conflict of interest)	
8. Minimization of stress-mental health (art. 19, avoid contact between victim and offender, art. 23.3.a avoid visual contact with accused, art. 23.3.b testimony without being present, art. 24.1.a recorded interview with child, art. 3 and art. 20, to be accompanied)	
9. Accountability of the offender (art. 12 Restorative Justice, Daly model)	
10. Validation y vindication (Daly model)	

“The biggest challenge of the analysis is to include in this evaluation the socio-cultural contexts (religious, cultural, political and social factors in general, among others) that influence the victim's assessment of the situation.”

METHODOLOGY

The researchers of the RETREAT project conducted a literature review on the treatment of victims of sexual violence in Italian criminal proceedings. Due to the worldwide pandemic due to Covid-19, it was not possible to directly analyse the reports collected by the police, the files of the public prosecutor's office, the sentences of the first two degrees of proceedings.



The choice was made to interview the professionals involved in this phase of the procedure: 30 interviews were conducted with Police and Carabinieri (6), Public Prosecutors (4), Magistrates (6), Lawyers (7), and experts from Victim Support Services (7).

As regards the third level of judgement, it was possible to analyse the judgments of the Supreme Court, available in the ItalGiure online database.

LEGAL FRAMEWORK OF SEX CRIMES IN ITALY

In the Italian legal system, the fundamental source of legislation concerning the offence of sexual violence (and sexual crimes in general) is the Criminal Code. It was adopted by Royal Decree No. 1398 of 19 October 1930 and has been amended and updated several times, in particular with regard to the section on sexual offences (Section II - Crimes against personal freedom).

In fact, it is interesting to note that until February 1996 (very recently) sexual violence was considered within the Italian legal system as a crime against public morals, and not against the person; it was with Law no. 66 of 15 February 1996, which completely redefined the legislation about sexual offences, that sexual violence was included among the offences against the person.

This change was extremely important for the Italian legal system and was only achieved after a long debate, not only political but also social, cultural and, at least in part, even religious.

Law no. 66 of 15 February 1996, which completely repealed Chapter I of the Italian Criminal Code, placed the new offence of sexual violence (which includes both rape and violent libidinal acts) within the category of offences against the person (and more precisely among those against personal freedom), emphasising that the conduct punished is an offence against the legal asset of sexual freedom and no longer against morality and decency. The

matter is now governed by Articles 609 bis et seq. of the Criminal Code, which also consider the various aggravating circumstances, the case of sexual acts with minors and group sexual violence.

Currently, in Italian law, sexual violence is defined as the offence committed by anyone who, by force or threat or abuse of authority, or by abusing the victim's physical or mental inferiority at the time of the act or misleading the victim by substituting another person, forces another person to commit or suffer sexual acts (Article 609 bis of the Criminal Code) and includes both rape and sexual abuse. The sanction for a person found guilty of this offence is imprisonment from six to twelve years, reduced to a maximum of two thirds in the case of a minor offence.

In recent years, public opinion in Italy has taken a strong interest in the issues of gender-based and domestic violence, following a number of particularly shocking cases, especially femicide. These cases have caused a great sensation due to the particularly cruel way in which they have been committed and the attention they have received from the mass media. The most immediate consequence of this attention was new legislation in this field, which also affected the area of sexual violence offences, even if only incidentally.

This new legislation is represented by Law No. 69/2019, commonly known as "Codice Rosso" from the colour usually adopted to mark campaigns to prevent, and inform about, the phenomenon of femicide and gender-based violence.

The law was published in the Official Gazette No. 173/2019 and became effective on 9 August 2019. It is essentially a measure aimed at strengthening the protection of victims of domestic and gender-based violence offences by intensifying the repression of such conduct through interventions in both the Criminal Code and the Code of Criminal Procedure.

TREATMENT OF VICTIMS IN CRIMINAL PROCEEDINGS

THE POLICE POINT OF VIEW

Police professionals interviewed pointed out that there are two protocols to follow in case of sexual violence. If a woman suffers violence and goes to the emergency room, the Code Pink is activated, which provides for a privileged time pathway to carry out all medical examinations, including blood and biological samples, consultation

with psychologists and visits with gynaecologists: this phase does not provide for a direct involvement of law enforcement officers, but for their full cooperation.

Afterwards, a complaint can be made and the investigation procedure can be carried out to identify the suspected offender.

In the event that a woman reports, even only orally, a case of sexual violence, ill-treatment, persecution, the EVA protocol is activated, a procedure that codifies the modalities of intervention in the above-mentioned cases, allowing to insert in a police database all the information useful to reconstruct episodes of domestic violence involving a family unit, independently of a report or a complaint.

In both cases, a police officer listens to the victim; according to the interviews, the operator in charge is not always a woman and does not always have a specialisation on the topic. These data can vary because some police stations in Italy have sections specialised in gender-based violence, but not all.

the professionals interviewed maintain that the skills of reception, listening and resolution are not the prerogative of the gender of the operator, but rather of his/her competence.

THE PROSECUTORS' POINT OF VIEW

In Italy, the public prosecutor's office has the task of supervising the work of the judicial police: it receives the complaint with immediacy and proceeds to register the crime and within 3 days to interview the victim.

The professionals interviewed were particularly sensitive to the climate and setting in which the victim should be heard. In fact, they mentioned that the law provides for a protected hearing also for adult victims in particular vulnerable situations. In particular, the law provides for emotional assistance by persons indicated by the victim, if he/she is a minor, as well as assistance by a psychologist.

Concerning the second degree of judgement, it has been pointed out that the emotional distance towards the victim is greater, since judges do not have the opportunity to see all those involved in the facts. They underline the importance of using video recordings of the testimonies that allow to go beyond the reading of the "cold transcript".



THE JUDGES' POINT OF VIEW

As regards the treatment of the victim during the trial, the judges affirm that they try “to avoid paying attention to the individual characteristics of the victim, as well as of the defendant, since our code provides that during witnesses’ hearings, no questions are asked that are not necessary for the establishment of the facts, that harm the dignity and confidentiality of the victim. In general, we absolutely refrain from making assessments that are not functional to the evaluation of the victim’s credibility”. Criminal proceedings are characterised by the presence of opposing versions of the facts, which must be thoroughly assessed in order to verify which of the two versions resists the counter-argument.

Nevertheless, the magistrates emphasise the importance of a description of the offended person (who only becomes a victim at the end of the trial) that does not damage his image. The drafting of motivations requires training also on a psychological-relational and social level, as well as an adequate experience describing the person as a subject who brings his own version, but who has rights and therefore is not stigmatised by hasty and stereotyped descriptions.

The participants emphasise that they are very careful about the treatment of victims during the trial. Within the court of Rome, the ‘Sala Aurora’ was created, connected to the courtrooms, from which vulnerable victims can give their testimony.

“Other times, perhaps out of haste, habit, lack of attention or experience with these types of offences, we resort to somewhat stereotypical descriptions. However, I have to say that there is a trend towards specialisation in this regard and, when there is specialisation, stereotypical descriptions are avoided and the conduct and context are described, trying to avoid particular stigmas.”

THE LAWYERS' VIEWPOINT

In Italy, victims of sexual violence are entitled to legal assistance with legal aid for any kind of proceedings up to the appeal in the Supreme Court.

According to the interviews conducted, lawyers inform the person about all their rights, especially about the possibility to obtain compensation. However, very few victims decide to

file a complaint: all those who take the legal route, however, request compensation for the damage suffered.

With regard to the training received, lawyers say that sexual crimes are studied and deepened in the Criminal Law course. There are annual courses organised by the bar associations for the purpose of recovering obligatory professional credits, but for specialised training in this field, they must be organised independently. With regard to the use of experts such as psychologists or psychiatrists as consultants or experts, the lawyers interviewed stated that few have specific training in legal psychology or damage quantification.

“We didn't even apply for state compensation, because the criteria and parameters until the very last amendment were untenable and it wasn't worth making such claims for €3,000. You also know that the decision of the European Court of Justice has intervened, stating that that amount should be fair and it is not.”

THE POINT OF VIEW OF EXPERTS FROM VICTIM SUPPORT SERVICES

All the professionals interviewed agreed that associations, anti-violence centres and public services in Italy are extremely specialised. Unfortunately, there are important critical issues in terms of access to funding, which make it difficult to provide a homogeneous service to different territories and different types of victims.

The services for victims start as information, social, psychological and legal guidance services and remain active throughout the process. In some territories, medical assistance is not always guaranteed, but in territories where it is available, it is guaranteed thanks to specific protocols with the hospitals linked to the Codici Rosa.

SUPREME COURT

The professionals interviewed claim that the Supreme Court is rather strict with acquittals. This information seems to be in agreement with what emerged from the analysis of the judgments: in particular, the jurisprudence of the Third Criminal Section seems to be constantly sensitive to the difficulties of the victims of crimes such as sexual violence, domestic violence, gender-based violence and ill-treatment.

According to a ruling by the 3rd Criminal Section in 2017, forcing a partner to have sexual intercourse constitutes a crime of sexual violence and the victim's statements have probative value, even in the absence of witnesses. The offence of sexual violence is generally committed in the presence of two persons involved in the act: the defendant and the victim.

According to another ruling in 2015, the offended party's statements have probative value and are fundamental to the decision on sexual violence without the need for external corroboration, but they must nevertheless be assessed and analysed.

The position of the Supreme Court regarding the treatment received by victims of sexual violence seems to be extremely attentive to the needs of victims. This provides greater protection for the victim, who can thus feel more recognised, listened to, understood and believed in, even in the absence of a third party (as in most cases of sexual violence).

RESTORATIVE JUSTICE

In general, all professionals interviewed, regardless of their specific profession, state that they are not informed about Restorative Justice and are not aware of specific programmes within their territory.



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